Fort Collins City Council Agenda

Regular Meeting

6:00 p.m. Tuesday,May **16**, 2023
City Council Chambers at City Hall, 300 Laporte Ave, Fort Collins, CO 80521
Zoom Webinar link: https://zoom.us/j/98241416497

NOTICE:
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

City Council members may participate in this meeting via electronic means pursuant to their adopted policies and protocol.

How to view this Meeting:



Meetings are open to the public and can be attended in person by anyone.



Meetings are televised live on Channels 14 & 881 on cable television.



Meetings are available through the Zoom platform, electronically or by phone.



Meetings are livestreamed on the City's website, fcgov.com/fctv

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide advance notice. Requests for interpretation at a meeting should be made by noon the day before.

A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione aviso previo. Las solicitudes de interpretación en una reunión deben realizarse antes del mediodía del día anterior.

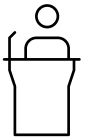
City of Fort Collins

Meeting agendas, minutes, and archived videos are available on the City's meeting portal at https://fortcollins-co.municodemeetings.com/

There are in person and remote options for members of the public who would like to participate in Council meetings:

Comment in real time:

During the public comment portion of the meeting and discussion items:



In person attendees can address the Council in the Chambers.
The public can join the Zoom webinar and comment from the remote meeting, joining online or via phone.



All speakers are required to sign up to speak using the online sign up system available at www.fcgov.com/agendas
Staff is also available outside of Chambers prior to meetings to assist with the sign up process for in person attendees.

Full instructions for online participation are available at fcgov.com/councilcomments.

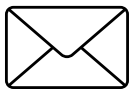
Join the online meeting using the link in this agenda to log in on an internet-enabled smartphone, laptop or computer with a speaker and microphone. Using earphones with a microphone will greatly improve audio experience.
To be recognized to speak during public participation portions of the meeting, click the 'Raise Hand' button.

Participate via phone using this call in number and meeting ID:
Call in number: 720 928 9299
Meeting ID: 982 4141 6497
During public participation opportunities in the meeting, press *9 to indicate a desire to speak.

Submit written comments:



Email comments about any item on the agenda to cityleaders@fcgov.com



Written comments can be mailed or dropped off at the City Manager's Office at City Hall, at 300 Laporte Ave, Fort Collins, CO 80521

Documents to Share during public participation*: Persons wishing to display presentation materials using the City's display equipment under the Public Participation portion of a meeting or during discussion of any Council item must provide any such materials to the City Clerk in a form or format readily usable on the City's display technology no later than two (2) hours prior to the beginning of the meeting at which the materials are to be presented.*

NOTE: All presentation materials for appeals, addition of permitted use applications or protests related to election matters must be provided to the City Clerk no later than noon on the day of the meeting at which the item will be considered. See Council Rules of Conduct in Meetings for details.

City Council
Regular Meeting Agenda

May 16, 2023 at 6:00 PM

Jeni Arndt, Mayor
Emily Francis, District 6, Mayor Pro Tem
Susan Gutowsky, District 1
Julie Pignataro, District 2
Tricia Canonico, District 3
Shirley Peel, District 4
Kelly Ohlson, District 5

City Council Chambers
300 Laporte Avenue, Fort Collins
& via Zoom at
https://zoom.us/j/98241416497

Cablecast on FCTV
Channel 14 on Connexion
Channel 14 and 881 on Xfinity

Carrie Daggett
City Attorney

Kelly DiMartino
City Manager

Anissa Hollingshead
City Clerk

PROCLAMATIONS & PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. **Declaring the Week of May 7-13, 2023 as Public Service Recognition Week.**

REGULAR MEETING
6:00 PM

(Amended May 15, 2023)

B) CALL MEETING TO ORDER

C) PLEDGE OF ALLEGIANCE

D) ROLL CALL

E) CITY MANAGER'S AGENDA REVIEW

•City Manager Review of Agenda

•Consent Calendar Review, including removal of items from Consent Calendar for individual discussion.

F) COMMUNITY REPORTS - None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS
(Including requests for removal of items from Consent Calendar for individual discussion.)

*Individuals may comment regarding any topics of concern, whether or not included on this agenda. Comments regarding land use projects for which a development application has been filed should be submitted in the development review process** and not to Council.*

• Those who wish to speak are required to sign up using the online sign-up system available at www.fcgov.com/council-meeting-participation-signup/

• Each speaker will be allowed to speak one time during public comment. If a speaker comments on a particular agenda item during general public comment, that speaker will not also be entitled to speak during discussion on the same agenda item.

• All speakers will be called to speak by the presiding officer from the list of those signed up. After everyone signed up is called on, the presiding officer may ask others wishing to speak to identify themselves by raising their hand (in person or using the Raise Hand option on Zoom), and if in person then will be asked to move to one of the two lines of speakers (or to a seat nearby, for those who are not able to stand while waiting).

• The presiding officer will determine and announce the length of time allowed for each speaker.

• Each speaker will be asked to state their name and general address for the record, and, if their comments relate to a particular agenda item, to identify the agenda item number. Any written comments or materials intended for the Council should be provided to the City Clerk.

• A timer will beep one time and turn yellow to indicate that 30 seconds of speaking time remain and will beep again and turn red when a speaker's time has ended.

*[**For questions about the development review process or the status of any particular development, consult the Development Review Center page on the city's website at https://www.fcgov.com/developmentreview/, or contact the Development Review Center at 970.221.6760.]*

H) PUBLIC COMMENT FOLLOW-UP

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

CONSENT CALENDAR

The Consent Calendar is intended to allow Council to spend its time and energy on the important items on a lengthy agenda. Staff recommend approval of the Consent Calendar. Agenda items pulled from the Consent Calendar by either Council or the City Manager will be considered separately under their own Section, titled "Consideration of Items Removed from Consent Calendar for Individual Discussion." Items remaining on the Consent Calendar will be approved by Council with one vote. The Consent Calendar consists of:

• Ordinances on First Reading that are routine;
• Ordinances on Second Reading that are routine;
• Those of no perceived controversy;
• Routine administrative actions.

1. **Consideration and Approval of the Minutes of the May 2, 2023 Regular Meeting.**

The purpose of this item is to approve the minutes of the May 2, 2023 regular meeting.

2. **Items Relating to the Appropriation of Federal Funds in the Community Development Block Grant and HOME Investment Partnership (HOME) Program Funds.**

A. Second Reading of Ordinance No. 066, 2023, Making Supplemental Appropriations in the Community Development Block Grant Fund.

B. Second Reading of Ordinance No. 067, 2023, Making Supplemental Appropriations in the HOME Investment Partnerships Grant Fund.

These Ordinances, unanimously adopted on First Reading on May 2, 2023, appropriate the City's FY2023 Community Development Block Grant (CDBG) Entitlement Grant and Fiscal Year (FY) 2023 Home Investment Partnerships Program (HOME) Participating Jurisdiction Grant from the Department of Housing and Urban Development (HUD), and CDBG program income from FY2021 and FY2022 and HOME Program Income from FY2021 and FY2022.

3. **Second Reading of Ordinance No. 068, 2023, Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the North College Mobile Home Park Rezoning.**

This Ordinance, unanimously adopted on First Reading on May 2, 2023, amends the Zoning Map and rezones the North College Mobile Home Park (the "Property") from the Service Commercial (CS) and Low Density Mixed-Use Neighborhood (LMN) zone districts to the Manufactured Housing (MH) zone district. Half the Property is the CS zone district, and the other half is the LMN zone district. With the proposed rezoning both of those would change to the MH zone district, which would cover the entirety of the property. The 33-acre Property is located southwest of the North College Avenue and Willox Lane intersection. The proposed rezoning was initiated by the City and continues a series of rezonings begun in 2020 to rezone existing mobile home parks to the MH zone district to promote the preservation of existing manufactured housing communities.

The rezoning request is subject to Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Commission. The Planning and Zoning Commission voted 5 to 1 at their March 23, 2023, hearing to recommend approval of the rezoning.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2022-068.

4. **Second Reading of Ordinance No. 069, 2023, Making Supplemental Appropriations, Appropriating Prior Year Reserves, and Authorizing Transfers of Appropriations for the West Elizabeth Corridor Final Design and Related Art in Public Places.**

This Ordinance, unanimously adopted on First Reading on May 2, 2023, appropriates local match funds and enables the City to receive and expend Federal and Colorado Department of Transportation (CDOT) funds to proceed forward with the Project. The funds will be used for the final 100% design and outreach regarding improvements along West Elizabeth Street from Mason Street and the Colorado State University (CSU) campus to Overland Drive. If adopted, the following amounts will be appropriated: (1) $651,628 from Transportation Capital Expansion Fee and unanticipated revenue from Transfort funds; (2) $616,124 of matching CSU-provided funds; and (3) $1,232,248 of Multi-Modal Options Funding grant funds for the Project. The amount of $6,516 will be appropriated to the Art in Public Places Program.

5. **Second Reading of Ordinance No. 070, 2023, Vacating a Portion of Impala Circle Right-of-Way.**

This Ordinance, unanimously adopted on First Reading on May 2, 2023, approves the vacation of Impala Circle right-of-way that is no longer desirable or necessary to retain for street purposes. Portions of the right-of-way area, once vacated, will be retained as public access and emergency access easements to the City to provide continued access for the neighboring properties.

6. **First Reading of Ordinance No. 072, 2023, Authorizing the Disposition of a Portion of a Shared Parking Easement and the Execution of an Amendment to the Shared Parking and Access Easement Deed and Agreement.**

The purpose of this item is to approve the reduction of a shared parking and access easement previously dedicated to the City and to authorize the execution of an amendment to the agreement that granted such easement. City Code Section 23-111 requires City Council authorization to sell, convey, exchange, or otherwise dispose of any and all interests in real property, including easements, owned in the name of the City. The original agreement was to allow for shared parking and access on the property located at the northwest corner of Drake Road and College Avenue for users of the MAX bus line. The goal for amending the shared parking space is to add an additional area for shared parking and additional parking spaces and to revise the original boundary so that it better conforms with proposed development's parking lot layout.

7. **Items Relating to Connexion Service in Larimer County.**

A. Resolution 2023-045 Authorizing the Execution of an Intergovernmental Agreement Between the City and Larimer County for Extension of Broadband Utility Services into Unincorporated Larimer County Beginning with Areas Near the Harmony Road and Taft Hill Road Intersection.

B. First Reading of Ordinance No. 073, 2023, Appropriating Unanticipated Revenue from Larimer County and Authorizing Transfers of Appropriations for the Design and Construction of Connexion into Areas Northwest and Northeast of the Harmony Road and Taft Hill Road Intersection and Related Art in Public Places.

The purpose of this item is to enter into an Intergovernmental Agreement (IGA) to enable the City and Larimer County to collaborate to provide Connexion broadband communication service within unincorporated Larimer County, including within the City's Growth Management Area. The initial project under the IGA to provide service to an area near the intersection of Harmony Road and Taft Hill Road will establish a cost- and revenue-sharing relationship through which the County will provide $3.58M to fund the design and construction of the expansion of Connexion service on behalf of the County. Upon appropriation of these funds and completion of this work, approximately 1,000 premises will be connected to Connexion service, and Connexion will thereafter share with the County a portion of the service revenue from these areas, subject to annual appropriation. Subsequent projects will be authorized through similar work orders executed pursuant to the IGA.

8. **Resolution 2023-046 Appointing Two Board Members to the Boxelder Basin Regional Stormwater Authority Board of Directors Being One Selected by the City and One Jointly Selected by the City and Larimer County.**

The purpose of this item is to consider making two appointments to the Board of Directors of the Boxelder Basin Regional Stormwater Authority.

END OF CONSENT CALENDAR

J) ADOPTION OF CONSENT CALENDAR

K) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

L) STAFF REPORTS - None.

M) COUNCILMEMBER REPORTS

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

The method of debate for discussion items is as follows:

- *Mayor introduced the item number and subject; asks if formal presentation will be made by staff*
- *Staff presentation (optional)*
- *Mayor requests public comment on the item (three minute limit for each person)*
- *Council questions of staff on the item*
- *Council motion on the item*
- *Council discussion*
- *Final Council comments*
- *Council vote on the item*

Note: Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all have an opportunity to speak. The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker's time.

9. **Second Reading of Ordinance No. 071, 2023, Amending the Land Use Code to Include Guidelines and Regulations for the Administration of Designated Areas and Activities of State Interest.**

   This Ordinance, adopted on First Reading on May 2, 2023, by a vote of 6-1 (Nay: Peel), amends the Fort Collins Land Use Code to include 1041 regulations. The 1041 powers give local governments the ability to regulate particular development projects occurring within their jurisdiction, even when the project has broader impacts. The 1041 regulations would allow for reviewing and permitting of two designated areas and activities of statewide interest: (1) major domestic water, sewage treatment; and (2) highway projects. Staff has amended the Ordinance to reflect the motion adopted by Council on first reading on May 2, 2023.

10. **First Reading of Ordinance No. 140, 2022, Establishing a Fort Collins Minimum Wage and Associated Recordkeeping and Enforcement Provisions.**

    The purpose of this item is to bring forth an ordinance setting a local minimum wage in compliance with HB19-1210.

11. **First Reading of Ordinance No. 074, 2023, Amending the Land Use Code to Include Regulations for Making Water Adequacy Determinations.**

    The purpose of this ordinance is to amend the Fort Collins Land Use Code to include water adequacy determinations for new development and redevelopment. The regulations are divided into three different categories: one for established potable water supply entities, one for new potable water supply entities, and one for non-potable water supply entities. The goal is to comply

with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

Water is a crucial and constrained resource, and the City strives to ensure that development meets the community's vision and expectations for responsible resource management. City Plan includes policies to ensure water is used wisely and our community is prepared for a changing climate. Currently, development within the City only occurs within the boundaries of existing City (Fort Collins Utilities) and special district potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District. A project is determined to have an adequate water supply through the issuance of a "will serve" letter from the established potable water supply entity at the time of development plan or building permit approval.

The necessity for an updated water adequacy review program stems from the limited supply and high cost of water resources, which have resulted in developers pursuing more creative ways to provide both potable and non-potable water to their proposed developments, particularly projects striving to provide affordable housing or the denser development patterns called for in City Plan.

P) OTHER BUSINESS

OB 1. **Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.**

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

OB 2. **Consideration of a Request to Extend the Time for the Ziegler/Corbett Appeals:**

City Code Section 2-52(c) authorizes the City Manager at any time prior to the expiration of the time for Council to hear an appeal, to request that Council approve the extension of time for hearing an appeal in the event of scheduling difficulties or notice defects.

Two appeals have been filed regarding the Planning and Zoning Commission's March 23, 2023, decision approving the Ziegler/Corbett Overall Development Plan Major Amendment, MJA220004. Questions have arisen regarding the scheduling of the hearing on these appeals. As a result, the City Manager has requested that Council approve the extension of time for hearing these appeals from June 22 to September 5, 2023. Here is the requested motion:

Motion: "I move that Council extend the time for the hearing of the appeals filed regarding the Planning and Zoning Commission's March 23, 2023, decision approving the Ziegler/Corbett Overall Development Plan Major Amendment, MJA220004, to September 5, 2023."

Q) ADJOURNMENT

Every regular Council meeting will end no later than midnight, except that: (1) any item of business commenced before midnight may be concluded before the meeting is adjourned and (2) the Council may, at any time prior to adjournment, by majority vote, extend a meeting beyond midnight for the purpose of considering additional items of business. Any matter that has been commenced and is still pending at the conclusion of the Council meeting, and all matters for consideration at the meeting that have not yet been considered by the Council, will be deemed continued to the next regular Council meeting, unless Council determines otherwise.

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PROCLAMATION

WHEREAS, residents of Fort Collins and the nation are served every single day by public servants at the federal, state, county and city levels who work to keeps our nation, counties, and cities working; and

WHEREAS, many public servants, including military personnel, police officers, and firefighters risk their lives in service; public servants also include teachers, scientists, and municipal employees; and

WHEREAS, the City of Fort Collins organization has over 2,000 employees providing quality and necessary services desired by our residents; and

WHEREAS, these services range in diversity from critical infrastructure to sustainability to quality of life programs designed to meet outcomes and goals in our Strategic Plan; and

WHEREAS, these public servants perform with expertise, passion, efficiency, integrity, pride and a commitment to the City's Mission, Vision, and Values; and

WHEREAS, City employees strive to do their jobs well and provide outstanding customer service and be trustworthy stewards of the community; and

WHEREAS, without these public servants Fort Collins would be a very different place.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim the week of May 7-13, 2023, as

PUBLIC SERVICE RECOGNITION WEEK

in Fort Collins to recognize the dedicated, good work of public servants throughout our community and in the City organization.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Anissa N. Hollingshead, City Clerk

SUBJECT

Consideration and Approval of the Minutes of the May 2, 2023 Regular Meeting.

EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes of the May 2, 2023 regular meeting.

STAFF RECOMMENDATION

Staff recommends approval of the minutes.

ATTACHMENTS

1. Draft Minutes, May 2, 2023

May 2, 2023

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS AND PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. **Declaring May 2023 as Fort Collins Archaeology and Historic Preservation Month.**

PP 2. **Friend of Preservation Awards**

The Historic Preservation Commission established the Friend of Preservation Awards in 1985 to recognize people, organizations, and projects that exemplify work in local history, education, and historic preservation. The chair of the HPC and the Mayor give the award each year. In 2023, the Commission recognized D.L. Roberts, Rose Brinks, Kim Medina, and Meg Dunn for both recent and lifetime achievements in support of preserving the Fort Collins area's important places.

Mayor Jeni Arndt presented the above proclamation and awards at 5:00 p.m.

REGULAR MEETING
6:00 PM

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the regular meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT
Mayor Jeni Arndt
Mayor Pro Tem Emily Francis
Councilmember Susan Gutowsky
Councilmember Julie Pignataro
Councilmember Tricia Canonico
Councilmember Shirley Peel
Councilmember Kelly Ohlson

STAFF PRESENT
City Manager Kelly DiMartino
City Attorney Carrie Daggett
City Clerk Anissa Hollingshead

CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- Noting there were no changes to the published agenda.
- Recommending adoption of the consent calendar as presented.
- Noting there is one item for discussion on the agenda.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS *(Including requests for removal of items from Consent Calendar for individual discussion.)*

Adam Eggleston, Fort Collins resident, spoke regarding Mental health awareness month and invited the community to attend an event this coming Saturday at Ginger and Baker to provide resources and education for mental health support and awareness across the community.

Nick DeSalvo, Fort Collins resident, spoke in a new role as the CSU Student Body President, inviting the Council to work together with the CSU student body on issues, before speaking about the uncertainty around Senate Bill 213 and the work being done by students to petition for an initiative to change the City's U+2 policy if the bill does not pass, noting the challenges facing students who are part of the missing middle not receiving support towards housing who need this change.

Barry Noon, Fort Collins resident, spoke regarding 1041 regulations, noting prior studies showing the impacts to the Poudre River from a response model demonstrating it is already impaired and at risk from various factors strongly dependent on limiting the amount of water taken from the river and stabilizing water levels late in the season. Concerns were expressed about the NISP project and its impact on the river.

Madeleine Kamburg Jennings, Fort Collins resident, spoke about the work done to draft an initiative to replace U+2 as someone impacted as part of the missing middle, and also spoke against the rental registration program with inspections.

David Bohler, Fort Collins resident, spoke representing CSU students as someone who served in the military over 24 years, noting the similarities found in communities with bases and universities, and the dynamic CSU brings to the town. He also encouraged allowing CSU students to apply for host family permits.

Jorge Garcia, Fort Collins resident and CSU student and housing security director for ASCSU, shared it is finals week and therefore there are not as many students as had been hoped tonight, while noting how big a problem housing is for students and the community at large and sharing support for changes to U+2.

Evan Welch, Fort Collins resident and director of governmental affairs with ASCSU and incoming housing security director, spoke regarding issues with housing and the need to work with students to help improve this situation.

Eric Sutherland, Fort Collins resident, spoke with concern regarding Connexion.

Braxton Dietz, CSU student, spoke regarding concerns around U+2 to counter some perceived misconceptions.

Crystal Boyer, Fort Collins resident and CSU student, spoke as a social worker and intern about the lack of shelter space and how it contributes to issues with housing and U+2.

Alayna Truxal, Fort Collins resident and incoming chief justice of the ASCSU supreme court, spoke regarding U+2 and student support for eliminating that ordinance.

Ross Cunniff, Fort Collins resident, spoke regarding water adequacy and the Council's prior position regarding lack of support for NISP ahead of next week's work session.

Marcus Zacarias, the outgoing ASCSU chief justice, reiterated comments about the needs for housing exacerbated by U+2 and how at this time of year, many students are graduating and leaving the community because of a lack of housing.

Grace Crangle, ASCSU director of marketing and CSU graduating senior, noted the importance of representing students and that a good portion of whom are impacted by U+2 provisions.

Public comment concluded at 6:42 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Shirley Peel offered congratulations to all the students who are graduating.

Mayor Jeni Arndt offered clarification the Council unanimously voted not to approve the mandatory rental inspections.

Councilmember Julie Pignataro thanked students for coming tonight and stated anticipation for ongoing conversations about occupancy at next week's work session. Regarding Connexion, she asked for clarification if there is a board with people on it.

City Manager Kelly DiMartino responded to confirm there is now a community advisory committee for transparency in ongoing public reports, and indicated Connexion Executive Director Chad Crager was also available to offer further clarifications if desired.

Councilmember Tricia Canonico also thanked students for continuing to come out and offered congratulations to graduating students.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

J) CONSENT CALENDAR

1. **Consideration and Approval of the Minutes of the April 18, 2023 Regular Meeting.**

   The purpose of this item is to approve the minutes of the April 18, 2023 regular meeting.

   Approved.

2. **Second Reading of Ordinance No. 063, 2023, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities Not Included in the 2023 Adopted City Budget.**

   This Ordinance, unanimously adopted on First Reading on April 18, 2023, appropriates $10,844,479 in prior year reserves in the Natural Areas Fund and $1,258,071 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, visitor amenities and restoration of wildlife habitat, as well as other Natural Areas Department stewardship activities to benefit the residents of Fort Collins.

   Adopted on Second Reading.

3. **Second Reading of Ordinance No. 064, 2023, Appropriating Unanticipated Grant Revenue from the Colorado Energy Office's Community Access to Electric Bicycles Grant Program for the Choose Your Ride, Shift Your Ride Program.**

This Ordinance, unanimously adopted on First Reading on April 18, 2023, supports the Choose Your Ride, Shift Your Ride project being administered by FC Moves in collaboration with Colorado State University in support of affordable active modes of transportation for low-income individuals by appropriating $148,350 of unanticipated grant revenue, awarded by the Colorado Energy Office, to the Transportation Fund.

Adopted on Second Reading.

4. **Second Reading of Ordinance No. 065, 2023, Authorizing the Acquisition by Eminent Domain Proceedings of Temporary Easements on Certain Lands Necessary to Construct Public Improvements for the Eastern Segment of the Laporte Corridor Improvement Project.**

This Ordinance, unanimously adopted on First Reading on April 18, 2023, authorizes the use of eminent domain, if deemed necessary, to acquire temporary construction easements needed for constructing improvements for the Laporte Corridor Project.

Adopted on Second Reading.

5. **Items Relating to the Appropriation of Federal Funds in the Community Development Block Grant and HOME Investment Partnership (HOME) Program Funds.**

A. First Reading of Ordinance No. 066, 2023, Making Supplemental Appropriations in the Community Development Block Grant Fund.

B. First Reading of Ordinance No. 067, 2023, Making Supplemental Appropriations in the HOME Investment Partnerships Grant Fund.

The purpose of this item is to appropriate the City's FY2023 Community Development Block Grant (CDBG) Entitlement Grant and Fiscal Year (FY) 2023 Home Investment Partnerships Program (HOME) Participating Jurisdiction Grant from the Department of Housing and Urban Development (HUD), and CDBG program income from FY2021 and FY2022 and HOME Program Income from FY2021 and FY2022.

Adopted Both Ordinances on First Reading.

6. **Public Hearing and First Reading of Ordinance No. 068, 2023, Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the North College Mobile Home Park Rezoning.**

The purpose of this item is to amend the Zoning Map and rezone the North College Mobile Home Park (the "Property") from the Service Commercial (CS) and Low Density Mixed-Use Neighborhood (LMN) zone districts to the Manufactured Housing (MH) zone district. Half the Property is the CS zone district, and the other half is the LMN zone district. With the proposed rezoning both of those would change to the MH zone district, which would cover the entirety of the property. The 33-acre Property is located southwest of the North College Avenue and Willox Lane intersection. The proposed rezoning was initiated by the City and continues a series of rezonings begun in 2020 to rezone existing mobile home parks to the MH zone district to promote the preservation of existing manufactured housing communities.

The rezoning request is subject to Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from

the Planning and Zoning Commission. The Planning and Zoning Commission voted 5 to 1 at their March 23, 2023, hearing to recommend approval of the rezoning.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2022-068.

Adopted on First Reading.

7. **Items Relating to the West Elizabeth Corridor Final Design.**

A. First Reading of Ordinance No. 069, 2023, Making Supplemental Appropriations, Appropriating Prior Year Reserves, and Authorizing Transfers of Appropriations for the West Elizabeth Corridor Final Design and Related Art in Public Places.

B. Resolution 2023-041, Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and Colorado State University for the West Elizabeth Corridor Final Design.

C. Resolution 2023-042, Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the West Elizabeth Corridor Final Design.

The purpose of this item is to appropriate local match funds and approve two intergovernmental agreements (IGAs) for the West Elizabeth Corridor Final Design (the Project) and enable the City to receive and expend Federal and Colorado Department of Transportation (CDOT) funds for and to proceed forward with the Project. The funds will be used for the final 100% design and outreach regarding improvements along West Elizabeth Street from Mason Street and the Colorado State University (CSU) campus to Overland Drive. If approved, the item will: (1) authorize the Mayor to execute an IGA with CDOT for the Project (the CDOT IGA); (2) authorize the Mayor to execute an IGA with CSU for the Project (the CSU IGA); (3) appropriate $651,628 from Transportation Capital Expansion Fee and unanticipated revenue from Transfort funds, $616,124 of matching CSU-provided funds, and $1,232,248 of Multi-Modal Options Funding grant funds for the Project; and (4) appropriate $6,516 to the Art in Public Places Program.

Adopted Ordinance on First Reading and Resolutions.

8. **First Reading of Ordinance No. 070, 2023, Vacating a Portion of Impala Circle Right-of-Way.**

The purpose of this item is to approve the vacation of Impala Circle right-of-way that is no longer desirable or necessary to retain for street purposes. Portions of the right-of-way area, once vacated, will be retained as public access and emergency access easements to the City to provide continued access for the neighboring properties.

Adopted on First Reading.

9. **Resolution 2023-043 Approving Expenditures From the Art in Public Places Water Utility Account to Commission an Artist to Create Art in Public Places for the Water Treatment Facility Project.**

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Water Utility Account to commission an artist to create a sculpture for the Water Treatment Facility Project. The expenditures of $45,000 will be for design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Todd Kundla to create the entrance artwork for the Water Treatment Facility Project that honors the staff, the process, and facility that provides clean water to the community.

Adopted.

10. **Resolution 2023-044 Approving Expenditures from the Art in Public Places Stormwater and Water Utility Account to Commission an Artist to Create Art in Public Places Relating to Stream Rehabilitation.**

The purpose of this item is to approve expenditures from the Art in Public Places (APP) Stormwater and Water Utility Accounts to commission an artist to create art for the Stream Rehabilitation Project. The expenditure of $191,800 will be for construction final design, engineering, materials, signage, fabrication, delivery, installation, and contingency for Andy Dufford and Chevos Studios to create the artworks for the Stream Rehabilitation Project.

Adopted.

END OF CONSENT CALENDAR

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to approve the recommended actions on items 1-10 on the Consent Calendar.

The motion carried 7-0.

K) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

None.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Tricia Canonico

- Participated in a land use code walking tour the prior weekend, noting it was great and very hands on.
- Also participated last week with the Mayor and several City staff in the inaugural Cities Summit of the Americas focused on the subnational level and how we can all work together.

Mayor Jeni Arndt

- Reiterated how phenomenal the Cities Summit of the Americas was, including the recognition of the work done at the municipal level.

Councilmember Susan Gutowsky

- Congratulated the City and partnering entities on providing excellent Earth Day activities at the library, including as a highlight the electric vehicle library carrying roughly 1500 materials and serving as a library card sign up location, as well as providing Wi-Fi hotspots.

Councilmember Shirley Peel

- Recognized last week was Administrative Professionals Day and this week is Professional Municipal Clerks Week.
- Attended Crossroads Safe House behind the Mask exhibit, and noted Crossroads can always use donations.
- Attended the Life of the Innocent Gala raising money to rescue children from human trafficking.
- Attended a cold Earth Day celebration.
- Attended the Torah celebration at the synagogue.

Councilmember Julie Pignataro

- Attended the beginning of the deliberative session regarding the land use code with Mayor Pro Tem Francis and noted she is anxious to see the report of the outcomes of that session.
- Attended FoCo MX and enjoyed the weekend and entertainment, seeing all the people coming from out of town to participate.

Clerk's Note: Mayor Arndt called for a break at 6:53 p.m. The meeting resumed at 7:06 p.m.

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

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

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.

Planning, Development and Transportation Deputy Director Paul Sizemore introduced the item before turning the presentation over to Senior Environmental Planner Kirk Longstein who presented as set forth in the slide deck in the agenda packet.

PUBLIC COMMENT

Paul Rennemeyer, Windsor mayor, spoke about the proposed 1041 regulations and how they are not a collaborative process and are unaligned with the goals of Council.

Ross Cunniff, Fort Collins resident and Land Conservation Stewardship Board member, spoke about the potential impacts of 1041 regulations on the Poudre River and encouraged more be done to protect natural areas.

Kevin Jones, Fort Collins Area Chamber of Commerce, reiterated perspectives shared by the Chamber in a letter to concern, continuing to believe local 1041 regulations add more complexity to an already complex process.

Chris Pletcher, General Manager of the Fort Collins Loveland Water District, spoke to how 1041 intersects the district's provision of water to the City and highlighted top two points of feedback on the proposed regulations, including support in decision point four for the use of IGAs as a form of appropriate regulatory authority, and expressed support of removing existing pipe thresholds in decision point one.

Mike Scheid, general manager of East Larimer County (ELCO) Water District, spoke to thank staff for their collaboration and noted ELCO submitted written comments earlier today with its feedback, including concern about what constitutes a major project based on their understanding of the proposed regulations including several pending projects it does not see as constituting major projects but that are rather pipeline projects in either right of way or a private easement.

Michelle Haefele, Fort Collins resident, urged Council to adopt the regulations before it and for the City to exercise its authority under state statute to apply these requirements to activity that

may have adverse impacts within the City, as well as including the Poudre River as an area of statewide concern. She encouraged the City not to use an IGA in lieu of 1041 regulations.

Brad Wins, general manager of Northern Water, spoke about challenges of uncertainty in providing services while residents have become intolerant of uncertainty, noting the need for creating win-win partnerships that share the burden of risk.

Joe Rowan, Fort Collins resident, spoke about the charge given to staff two years ago to stop NISP and noted the error in pursuing 1041 to stop a single project and encouraged taking a more balanced approach tonight focused on defining outcomes.

Brian Zick, district manager of Boxelder Sanitation District, noted Boxelder is small. He is also the chair of the Executive committee of the North Front Range Water Quality Planning Association which is looking at water quality in Northern Colorado. Presently doing a non-point source watershed study and considering things like water trading programs to look at how to improve water quality and stream flows. His vision is that is the kind of thing all these entities should be talking about together with investments to really make things happen rather than talking about regulations that could create a chasm between organizations that restrict the ability to collaborate.

Dennis Gatlin, chair of the Boxelder Sanitation District Board of Directors, noted the district stands shoulder to shoulder with the City's environmental objectives, while noting the perception these regulations show a lack of trust in long standing partners. He encouraged the use of enforceable and accountable agreements within common understanding, and asked Council to consider exempting local government partners from 1041 regulations.

Gary Wockner spoke on behalf of Save the Poudre with two points, first asking the Council to vote yes and pass these regulations, and then regarding decision point 3, he shared a perception Council has received erroneous information on this point. State law and court case precedent allows this sort of regulation, and other counties and cities have and are doing this. In 2020, two former Larimer County commissioners did it here, permitting NISP, invoking cross jurisdictional authority and causing negative impacts on natural areas in Fort Collins. This is about empowerment of the people of Fort Collins and the City organization, as well as staff and this Council.

Matthew Fries, Mayor of the Town of Severance spoke to share biographical data about the town's 11,000 residents, roughly 60% of whom are employed within Fort Collins, including 32 Fort Collins police officers. As a former longtime resident of Fort Collins, he noted many people move to Severance because it is the only affordable commutable residence. The other part of that reality is having a sustainable water source. The creation of NISP has nothing to do with power but rather with taking care of residents. Water was the consuming factor of his time as mayor. The common theme in all dialogues and summits on this topic is it is going to take a regional approach.

COUNCIL DISCUSSION

Councilmember Peel asked two questions, including what the IGA process would look like. Longstein noted staff would need more guidance from Council on how they would like that structured. She also asked about using a third-party consultant, noting it did not seem to bring predictability to cost. Longstein replied there is not a full set of data from the existing request for information. Deputy Director Sizemore noted any project would have an element of unpredictability that would get more refined as the project moved further along. It is the hope of staff that in having those initial conversations, staff would be gathering information to be able to identify contingencies and better zero on estimates.

Councilmember Ohlson shared his belief the City has listened to community and regional partners, with more things changed in their favor over environmental protections, noting a desire not to compromise any further. In response to a question about why these regulations do not

apply to the whole city, Planner Longstein noted under project definitions, if it is partially or fully within the City limits, it would be covered. Under a FONAI determination, it would look at several geographic areas to encourage protection of natural areas. Staff is recommending moving forward with the FONSI (finding of no significant impact) rather than the FONAI (finding of no adverse impact). Councilmember Ohlson also questioned the integrity of the definition of "mitigation" in the proposed regulations, and separately expressed his disinterest in a pre-application review by Council. Planner Longstein clarified this was not included in the present staff recommendation.

Councilmember Pignataro asked a series of questions answered by Planner Longstein and Senior City Attorney Brad Yatabe. There was a request for follow up before second reading if the ordinance moves forward on whether a city property owned by the City but outside the City limits, would it be covered by Larimer County regulations, and how consultants selected by the City would be determined reliably unbiased; Planner Longstein replied that could be part of selection criteria.

Mayor Arndt asked a series of questions, focused on IGA options.

Mayor Pro Tem Francis stated agreement with the staff recommendations as presented.

Councilmember Gutowsky asked for clarification on the community comment about the scope of our regulation and what happens in a natural area or river when there is an impact outside of our GMA. Longstein noted this is related to Decision Point 3.

Council then walked through the five decision points to indicate support for any potential amendments to the ordinance prior to its adoption on first reading.

Decision Point 1 – Update Definitions

There was consensus support for the staff recommendations shown on the slide in the presentation as a, b, and c, to amend the ordinance, including:

a) Remove pipe-size diameter from defined project thresholds.

b) Add definition for Public Right of Way and exclude projects in Public Right of Way from covered projects.

c) Add definitions that redefine the Applicability of Standards determination (FONAI →FONSI)

   i. Impact
   ii. Cumulative impacts
   iii. Significant
   iv. Finding of No Significant Impact (FONSI)

Decision Point 2 – Update Application Procedures

There was consensus support for amending the item to include staff recommendations a and b, as well as for d:

a) Add conceptual submittal document that summarizes the potential for a significant impact.

b) 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 Optional Pre-Application Review by Council.

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

There was consensus support for the staff recommendation to make no changes to the ordinance in this area, as well as to schedule a work session to explore designating areas of statewide interest outside the jurisdiction and/or the Poudre River (other geographic limits) and analyze policy implications and establish parameters for a new work stream.

Decision Point 4 - Consider Intergovernmental Agreement (IGA)

There was consensus support for the staff recommendation to make no changes to the ordinance in this area.

Decision Point 5 – Permit Administration

There was consensus support for the staff recommendation for option a, to direct staff to bring back a supplemental appropriation for permit administration. With the proposal of the process of using On-call developmental support.

Mayor Arndt called for a 20-minute break at 9:05 p.m. to allow an opportunity for the City Attorney to write up the amendments with consensus support for the Council to act on. The meeting resumed at 9:50 p.m.

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 071, 2023 Amending the Land Use Code to Include Regulations for Areas and Activities of State Interest, including staff recommendations of 2a) and 2b).

> ***Staff Recommendation 2a) Add conceptual submittal document that summarizes the potential for a significant impact.***
>
> ***Staff Recommendation 2b) 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.***

City Attorney Daggett ran through the changes associated with the scope changes to the ordinance relating to Decision Point 1, reading them into the record and displaying them for meeting participants in the Council Chambers and watching the meeting broadcast, including:

- A change in Section 6.1.9 to the definition of “Major new sewage system” on page 35 of the ordinance:

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) ~~Distribution and transmission lines~~ Will require a new public right-of-way or easement greater than 30-feet in width ~~12” diameter pipe~~ and ~~1,320~~ 1,452 linear feet in length in the aggregate for the proposed development plan; or

(b) Will require a new, or utilize an existing, easement within any City natural area or conserved land greater than ~~of~~ 30-feet ~~or greater~~ in width and 1,452 ~~1,320~~ linear feet in length in the aggregate for the proposed development plan.

- A change in Section 6.1.9 to the definition of "Major new domestic water system" also on page 35 of the ordinance:

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~~ Will require a new public right-of-way or easement greater than 30-feet in width ~~12" diameter pipe~~ and ~~1,320~~ 1,452 linear feet in length in the aggregate for the proposed development plan; or

(b) Will require a new, or utilize an existing, easement within any City natural area or conserved land greater than ~~of~~ 30-feet ~~or greater~~ in width and 1,452 ~~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.

- A change in Section 6.1.9 to the definitions of "Major extension of an existing domestic water treatment system" and "Major extension of an existing sewage treatment system" on page 36 of the ordinance:

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 public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than ~~Expanding any existing easement to a total width of~~ 30-feet or less and for a distance of ~~1,320~~ 1,452 linear feet or less; or

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less

(6) ~~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 public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than ~~Expanding any existing easement to a total width of~~ 30-feet or less and for a distance of ~~1,320~~ 1,452 linear feet or less; ~~or~~

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less; or

(6) Any sewage system facility ~~or lift station~~ that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

- Added a new definition in Section 6.1.9 of Public Right of Way on page 37 of the ordinance:

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

- Elimination in Section 6.1.9 on page 33 of the existing definition for “Adverse impact”

~~*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.~~

- Elimination in Section 6.1.9 on page 34 the definition of FONAI

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

- Adding a definition in Section 6.1.9 on page 34 of “Finding of no significant impact (or FONSI):

Finding of no significant impact (or FONSI) shall mean the decision by the Director as to whether a potential impact is not significant based on the scale and context of the proposed development plan as well as the magnitude, duration or likelihood of an impact occurring.

- Adding a definition in Section 6.1.9 on page 34 of "Impact":

Impact shall mean the direct or indirect negative effect or consequence resulting from development that may or may not be avoidable or fully mitigated.

- Adding the language "The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact." In three places, in Section 6.7.1 on page 54; in Section 6.8.3 on page 60; and in Section 6.9.3 on page 62:

6.7.1 Review Standards for All Applications

In addition to the review standards for specific activities listed at Divisions 6.8 and 6.9, all applications under these Regulations, in consideration of proposed mitigation measures, shall be evaluated against the following general standards, to the extent applicable or relevant to the development plan, in City Council's reasonable judgment. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.

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. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit.

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. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may

approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit.

- Making conforming changes throughout the ordinance to change the reference from FONAI to FONSI and to change the reference from adverse impact to significant impact.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to amend the motion on the floor to amend the ordinance to include the changes related to Decision Point 1 read into the record by the City Attorney.

The motion to amend the motion on the floor carried 7-0.

The motion as amended carried 6-1.

Ayes: Councilmember Canonico, Pignataro, Gutowsky, Ohlson, Mayor Pro Tem Francis and Mayor Arndt.
Nays: Councilmember Peel.

Mayor Arndt invited further discussion on the ordinance as adopted on first reading.

Councilmember Pignataro offered comments on her perspective at this phase, noting the work that was undertaken around this topic was never about stopping a particular project, but a project did highlight issues with the current process. She shared her primary concern has always been ensuring our natural areas remain as undisturbed as they can but also that there is a predictable path forward for these projects that need to happen for our region in general. The support of our neighbors is important and there is a level where it cannot affect our wellbeing. Our air quality is some of the worst in the world because of other goings on in the Northern Colorado region. This is what led to making regionalism a priority to address these issues holistically. These regulations are not intended to kill any project but rather to put parameters around a project so that it does not hurt the things that make our community great.

Councilmember Peel shared she has a different approach to this, agreeing that while we do want to protect the environment in our City, we also cannot forget residents in her district are served by the Fort Collins Loveland Water District. While she is one of seven in making decisions for the City, she was elected to represent District 4 and these regulations have adverse effects on her district.

Mayor Arndt spoke about the intent of the 1041 regulations to protect natural areas and spaces while allowing permits and projects to come through. She asked staff for some reassurance that these 1041 regulations will be designed in a manner that allows projects to come through. Planner Longstein responded, speaking to the primary focus on incentivizing the avoidance natural areas, as well as working with applicants to work through mitigation when they cannot be avoided, all with the intent of also providing certainty and clarity to applicants through the use of geographic areas for a better outcome for projects. In response to a follow up question about concerns regarding permitting being used as a delay tactic, Longstein also discussed the 60-day ‘shot clock’ that was added as a self-imposed requirement on staff requiring action taken when an application comes in. There is also a 90-day shot clock that incorporates the Council hearing within 30 days of the submission of a complete application, with the Council hearing occurring within 60 days of that.

Regarding a potential work session on extra jurisdictional regulation, Mayor Arndt reiterated her own concerns regarding the legality surrounding this topic while stating she would not object to holding a work session.

OTHER BUSINESS

OB 1. **Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.**

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

None.

Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 10:15 p.m.

_____
Mayor

ATTEST:

_____
City Clerk

DRAFT

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Beth Rosen, Grants Compliance and Policy Manager
Ted Hewitt, Legal

SUBJECT

Items Relating to the Appropriation of Federal Funds in the Community Development Block Grant and HOME Investment Partnership (HOME) Program Funds.

EXECUTIVE SUMMARY

A. Second Reading of Ordinance No. 066, 2023, Making Supplemental Appropriations in the Community Development Block Grant Fund.

B. Second Reading of Ordinance No. 067, 2023, Making Supplemental Appropriations in the HOME Investment Partnerships Grant Fund.

These Ordinances, unanimously adopted on First Reading on May 2, 2023, appropriate the City's FY2023 Community Development Block Grant (CDBG) Entitlement Grant and Fiscal Year (FY) 2023 Home Investment Partnerships Program (HOME) Participating Jurisdiction Grant from the Department of Housing and Urban Development (HUD), and CDBG program income from FY2021 and FY2022 and HOME Program Income from FY2021 and FY2022.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on Second Reading.

BACKGROUND / DISCUSSION

The Community Development Block Grant (CDBG) Entitlement Program provides annual grants on a formula basis to eligible cities and counties to improve the living conditions for low- and moderate- income persons. Recipient communities develop their own programs and funding priorities. In the 2020-2024 Consolidated Plan submitted to HUD, the City prioritized the use of these funds to further its affordable housing goals and provide public services for persons experiencing homelessness and persons most at risk of homelessness.

The HOME Investment Partnership Program (HOME) provides annual grants on a formula basis to Participating Jurisdictions to implement local housing strategies designed to increase homeownership and housing opportunity for low and very low-income residents. These funds are used annually to further the affordable housing goals outlined in the Housing Strategic Plan.

On February 27, 2023, HUD notified the City of its formula allocations for both the CDBG and HOME programs. This appropriation includes $1,107,281 for CDBG and $669,292 for HOME. Additionally, the

City receives annual repayments into the CDBG and HOME programs, referred to as Program Income (PI), through the payoffs of Home Buyer Assistance (HBA) loans and loan payments on affordable housing projects. These payments go back to their respective programs for re-allocation to eligible projects. Since April 1, 2022, the CDBG program has received $53,860 in Program Income and the HOME Program has received $281,806 in Program Income.

Ordinance A appropriates a total of $1,161,141 into the CDBG Program, which includes the Entitlement Award of $1,107,281 and $53,860 from Program Income.

Ordinance B appropriates a total of $951,098 into the HOME Program, which includes the Entitlement Award of $669,292 and $281,806 from Program Income.

These funds are allocated through an annual Competitive Process, with funding recommendations being made to Council by the Human Services and Housing Funding Board. Recommendations for the use of these funds will be presented to Council at its regular meeting on June 6, 2023.

CITY FINANCIAL IMPACTS

This item will appropriate $2,112,239 in federal funding to the City which will be allocated to housing and community development related programs and projects, and the administration of the funds, thereby reducing the demand on the City's General Fund budget to address such needs.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance A for Consideration
2. Ordinance B for Consideration

ORDINANCE NO. 066, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS IN THE
COMMUNITY DEVELOPMENT BLOCK GRANT FUND

WHEREAS, the City estimates it will receive in federal fiscal year 2023-2024 unanticipated revenue in the form of federal Community Development Block Grant ("CDBG") funds from Housing and Urban Development ("HUD") totaling $1,107,281; and

WHEREAS, the City received unanticipated CDBG Program income in the amount of $53,860; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of providing affordable housing and human services for city residents; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Community Development Block Grant Fund and will not cause the total amount appropriated in the Community Development Block Grant Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal grant, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Community Development Block Grant Entitlement Program as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

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 there is hereby appropriated from new revenue or other funds from HUD in the Community Development Block Grant Fund, the sum of ONE MILLION ONE

HUNDRED SEVEN THOUSAND TWO HUNDRED EIGHTY-ONE DOLLARS ($1,107,281), to be expended in the Community Development Block Grant Fund upon receipt thereof for federal fiscal year 2023-2024 Community Development Block Grant projects.

Section 3. That there is hereby appropriated from new revenue or other funds from program income in the Community Development Block Grant Fund, the sum of FIFTY-THREE THOUSAND EIGHT HUNDRED SIXTY DOLLARS ($53,860), to be expended in the Community Development Block Grant Fund for approved Community Development Block Grant projects.

Section 4. That the appropriation herein for the Community Development Block Grant Entitlement Program is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

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 on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

ORDINANCE NO. 067, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS IN THE
HOME INVESTMENT PARTNERSHIPS GRANT FUND

WHEREAS, the Home Investment Partnerships Program (the "HOME Program") was authorized by the National Affordable Housing Act of 1990 to provide funds in the form of Participating Jurisdiction Grants for a variety of housing-related activities that would increase the supply of decent, safe, and affordable housing; and

WHEREAS, on March 1, 1994, the City Council adopted Resolution 1994-042 authorizing the Mayor to submit to the Department of Housing and Urban Development ("HUD") a notification of intent to participate in the HOME Program; and

WHEREAS, on May 26, 1994, HUD designated the City as a Participating Jurisdiction in the HOME Program, allowing the City to receive an allocation of HOME Program funds as long as Congress re-authorizes and continues to fund the program; and

WHEREAS, the City estimates it will receive in federal fiscal year 2023-2024 unanticipated revenue in the form of HOME Program funds from HUD totaling is $669,292; and

WHEREAS, the City received unanticipated HOME Program income in the amount of $281,806; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of providing affordable housing for city residents; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Home Investment Partnerships Grant Fund and will not cause the total amount appropriated in the Home Investment Partnerships Grant Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal grant, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal grant or the City's expenditure of all funds received from such grant; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Home Investment Partnerships Program as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

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 there is hereby appropriated from new revenue or other funds from HUD in the HOME Investment Partnerships Grant Fund the sum of SIX HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED NINETY-TWO DOLLARS ($669,292), to be expended in the HOME Investment Partnerships Grant Fund upon receipt from federal fiscal year 2023-2024 HOME Participating Jurisdiction Grant Funds.

Section 3. That there is hereby appropriated from new revenue or other funds from program income in the HOME Investment Partnerships Grant Fund the sum of TWO HUNDRED EIGHTY-ONE THOUSAND EIGHT HUNDRED SIX DOLLARS ($281,806), to be expended in the HOME Investment Partnerships Grant Fund for approved HOME Program projects.

Section 4. That the appropriation herein for HOME Investment Partnerships Grant Entitlement Program is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

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 on the 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Ryan Mounce, City Planner
Heather Jarvis, Legal

SUBJECT

Second Reading of Ordinance No. 068, 2023, Amending the Zoning Map of the City of Fort Collins by Changing the Zoning Classification for that Certain Property Known as the North College Mobile Home Park Rezoning.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 2, 2023, amends the Zoning Map and rezones the North College Mobile Home Park (the "Property") from the Service Commercial (CS) and Low Density Mixed-Use Neighborhood (LMN) zone districts to the Manufactured Housing (MH) zone district. Half the Property is the CS zone district, and the other half is the LMN zone district. With the proposed rezoning both of those would change to the MH zone district, which would cover the entirety of the property. The 33-acre Property is located southwest of the North College Avenue and Willox Lane intersection. The proposed rezoning was initiated by the City and continues a series of rezonings begun in 2020 to rezone existing mobile home parks to the MH zone district to promote the preservation of existing manufactured housing communities.

The rezoning request is subject to Section 2.9.4 of the Land Use Code. The rezoning may be approved, approved with conditions, or denied by Council after receiving a recommendation from the Planning and Zoning Commission. The Planning and Zoning Commission voted 5 to 1 at their March 23, 2023, hearing to recommend approval of the rezoning.

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2022-068.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

REZONING REQUEST

The proposed rezoning was initiated by the City and is involuntary on the part of the property owner. In 2020, the City created the Manufactured Housing (MH) zone district and rezoned a majority of the City's existing mobile home parks to the MH district to promote the preservation of manufactured housing, a policy goal found in both City Plan and the 2022 Strategic Plan.

The rezoning of the Property was considered for rezoning in late 2020 along with other mobile home parks; however, deteriorating COVID conditions and the lack of technology and internet access for the park's senior residents to participate in remote meetings led staff to delay the process. An end to pandemic conditions and renewed policy guidance for rezoning in the recently adopted North College MAX Plan once again present an opportunity to consider rezoning the Property to the MH zone district.

MANUFACTURED HOUSING PRESERVATION AND POLICY GOALS

Manufactured housing is an important source of naturally occurring affordable housing in the community. Many of the City's manufactured housing communities feature housing costs that are comparable to or even below other forms of subsidized and deed-restricted affordable housing. Manufactured housing also offers similar benefits to "stick-built" single-family dwellings, including greater privacy and personal space and a strong sense of community.

While a unique form of housing, manufactured housing is also limited, representing less than 2% of all housing units in Fort Collins. Over the past 20 years, five manufactured housing communities have closed in Fort Collins, mostly due to redevelopment, which resulted in the loss of hundreds of affordable and attainable units and the displacement of many residents. As a result, many City policy documents, including City Plan and the 2022 Strategic Plan, include policies and goals to preserve existing manufactured housing communities.

After the closing of several manufactured housing communities between 2008 and 2012, the City adopted the Affordable Housing Redevelopment Displacement Mitigation Strategy Report, which included a recommendation to create a new manufactured housing zone district to support manufactured housing preservation. In 2020, the MH zone district was created, and the City rezoned six of the largest mobile home parks in the community to the MH designation.

PROPERTY CONTEXT AND HISTORY

The Property includes three parcels totaling approximately 33 acres on the west side of North College Avenue south of Willox Lane. The eastern half of the Property was annexed into the City in 1959 as part of the North College Annexation, while the western half was annexed into the City in 1971 as part of the North College Mobile Plaza Annexation. The park was also developed in multiple phases, with the eastern (front) half being developed before the western (back) half.

The Property has featured many different zoning designations and the current split zoning has been a feature since the original development of the North College Corridor Plan and adoption of the Land Use Code in the 1990's. While the western half of the property features a residential designation (LMN zone district), the eastern half carries a commercial designation (CS zone district). The CS designation is consistent with the broader North College Corridor Plan land-use guidance for commercial zoning along the College Avenue frontage. More recent policy plans including City Plan and the North College MAX Plan now provide land use guidance indicating the entirety of the Property should fall under a residential designation and/or be rezoned to the MH zone district to reflect its longstanding use as a manufactured housing community.

The CS designation on the eastern half of the property also renders the mobile home park a nonconforming use because a manufactured housing community is not a permitted land use in the CS zone district.

REZONING CRITERIA AND STAFF EVALUATION

A rezoning is governed by criteria in Land Use Code Subsections 2.9.4(H)(2) and 2.9.4(H)(3). A rezoning must demonstrate compliance with either criterion one or two, while three additional criteria are listed for additional considerations by the Planning and Zoning Commission and Council. These five criteria can be paraphrased as:

1. Consistent with the Comprehensive Plan;
2. Warranted by Changed Conditions;
3. Compatible with Surrounding Uses;
4. Impacts to the Natural Environment; and
5. Logical and Orderly Development Pattern

Staff is recommending the rezoning primarily in consideration of consistency with the comprehensive plan, but a full staff evaluation of compliance or non-applicability to all criteria can be found below and in the attached Planning and Zoning Commission staff report.

Criterion One: Consistent with the Comprehensive Plan

In evaluating consistency with City Plan, staff analyzed both the land use and policy guidance found in City Plan as well as the North College Corridor Plan and the North College MAX Plan, each of which was adopted as an element of City Plan.

Land Use Guidance

The City Plan Structure Plan Map identifies the Property under the “Mixed Neighborhood” place type designation, which aligns with the proposed MH zone district in terms of land use character (primarily residential), density, and proximity to transit and services. The most recent City Plan update in 2019 changed the designation for the eastern half of the property from commercial to residential to better align with policy guidance to preserve and protect manufactured housing communities and in recognition of the longstanding residential use of the property.

The Mixed Neighborhood place type also specifically refers to manufactured housing within existing neighborhoods, indicating, “while reinvestment in existing mobile home parks is encouraged, redevelopment of existing parks is not.” The MH district is designed to discourage redevelopment and further addresses the Mixed Neighborhood place type description found in City Plan.

Within the North College Corridor Plan, the land use framework map identifies the eastern half of the Property under a commercial designation, reflecting the broader North College Avenue frontage that is primarily intended for commercial land uses. The Property is unique along the North College frontage as one of a small handful of properties that contain residential dwellings that are currently nonconforming under CS zone district standards as being within 200-feet of College Avenue. Under the proposed rezoning of the Property to the MH zone district, this nonconformity would be eliminated.

The North College MAX Plan contains the most recent land use guidance for the Property. The Plan recommendations include preserving the Property by rezoning it to the MH zone district and excluding the Property from a proposed Transit Oriented Development Overlay, which seeks to spur intensification in the corridor to support additional transit service. A rezoning to the MH zone district is in alignment with these Plan goals and strategies.

When looking at all three plans together, the balance of land use guidance supports the rezoning, especially when considering the two most recent plans include specific recommendations to change the land use designation of the Property.

Policy Guidance

Manufactured housing preservation and housing affordability and attainability are important community priorities and reflect policy goals in multiple policy plans, including:

> (City Plan) LIV 5.2 – Supply of Attainable Housing
> *Encourage public and private sectors to maintain and develop a diverse range of housing options, including housing that is attainable (30% or less of monthly income) to residents earning the median income. Options could include [accessory dwelling units], duplexes, townhomes, mobile homes, manufactured housing and other "missing middle" housing types.*

Manufactured housing represents one of the most affordable types of housing in Fort Collins, comparable to subsidized and deed-restricted housing for those earning between 30% and 60% of the area median income. As a naturally occurring source of affordable housing, manufactured housing communities represent a comparable number of dwelling units to Fort Collins' entire deed-restricted affordable housing supply. Preserving manufactured housing helps protect and maintain an important supply of affordable housing in Fort Collins.

In addition to its affordability, manufactured housing is a unique and limited type of housing that has been in decline over the past several decades due to community closures and redevelopment. The goal of preservation through rezoning to the MH district is designed to protect and promote the ongoing operation of this limited housing resource, which has proven to be difficult to expand via new manufactured housing development.

> (City Plan) LIV 6.4 – Permanent Supply of Affordable Housing
> *Create and maintain an up-to-date inventory of affordable housing in the community. Pursue policy and regulatory changes that will encourage the rehabilitation and retention of affordable housing in perpetuity.*

The preservation of manufactured housing through rezoning represents a similar effect to the regulatory changes envisioned by City Plan for the City's subsidized and deed-restricted affordable housing. While most units in manufactured housing communities are private and not publicly subsidized, they have consistently provided an important source of housing at similar pricing levels. While rezoning alone does not guarantee affordability, it promotes the long-term operation of these communities and reduces the likelihood of redevelopment and the loss of some of the community's most affordable housing options.

> (City Plan) LIV 6.9 – Prevent Displacement
> *Build the capacity of homeowner groups, affordable housing providers and support organizations to enable the purchase, rehabilitation and long-term management of affordable housing. Particular emphasis should be given to mobile home parks located in infill and redevelopment areas.*

Many of the community's manufactured housing communities are located within or adjacent to commercial areas, or along corridors with existing or planned transit services, which encourages redevelopment to higher intensities. Rezoning properties containing manufactured housing to the MH district provides an important regulatory and policy signal that manufactured housing is encouraged and its continued operation is desired even amongst areas otherwise anticipated to experience infill and redevelopment.

This policy signal may also bolster the efforts of residents, local organizations, and the City to support and reinvest in these communities, including the potential for future acquisition of the underlying property by residents through a resident-owned community if a property owner elects to sell a property in the future.

Criterion Two: Warranted by Changed Conditions

Ongoing infrastructure enhancements and evolving policy goals related to infill and intensification may be creating additional pressure and incentive for properties to redevelop along the North College Corridor. Both the City and nearby stakeholders anticipate or encourage a certain level of redevelopment and intensification in the corridor to support future transit services.

Of the handful of mobile home parks that have closed over the last two decades in Fort Collins, many share similarities with the Property in that their location in commercial zone districts along arterial streets led to greater redevelopment opportunities and thus park closures and displacement of residents. Having identified this condition, the recently adopted North College MAX Plan makes specific recommendations to rezone the Property and exclude the property from a potential expansion of the Transit Oriented Development Overlay Zone, which could further add redevelopment incentive within the corridor.

Criterion Three: Compatible with Surrounding Uses

The proposed rezoning would not alter the long-established mix of land uses on the Property or nearby vicinity, because no physical change is proposed. The close proximity of residential and commercial uses is common to most of Fort Collins's commercial and residential zone districts and generally viewed as compatible with appropriate mitigation measures if future redevelopment near the Property is proposed in the future.

Criterion Four: Impacts to the Natural Environment

The proposed rezoning is not anticipated to result in impacts to the natural environment, because no physical changes are proposed with the rezoning. To the extent redevelopment of a property could positively benefit the natural environment through the application of more recent Land Use Code standards (habitat buffers, mitigation measures, etc.) the rezoning and preservation of the current use may have long-term impacts, but no sensitive natural features are presently identified on the Property.

Criterion Five: Logical and Orderly Development Pattern

The proposed rezoning is not anticipated to result in development pattern changes. While the existing mobile home park predates many of the individual standards of the Land Use Code for orderly development (e.g., street connectivity standards) preserving the existing development provides benefits from broader growth framework goals by providing for a variety of housing options and prices in the community that would otherwise result in additional demand for regional commuting and a decrease in the City's housing opportunities and social connectivity.

CITY FINANCIAL IMPACTS

There are no direct financial impacts associated with the proposed rezoning.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Planning and Zoning Commission voted 5 to 1 at their March 23, 2023, hearing to recommend approval of the rezoning to Council. An excerpt of the draft minutes of the Commission's discussion is attached. The dissenting vote was primarily related to the involuntary aspect of the rezoning and impacts on private property rights.

PUBLIC OUTREACH

A neighborhood meeting discussing the rezoning proposal was held on February 5, 2023. Residents of the North College Mobile Home Park were the primary attendees of the meeting and were largely in support of the proposed rezoning and manufactured housing preservation. A summary of the neighborhood meeting and the public comments are attached.

Staff has been in contact with the Property owners to relay information about the proposal and process steps; however, no formal comment has been received in opposition or support of the proposed rezoning.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 068, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE
CITY OF FORT COLLINS BY CHANGING THE ZONING
CLASSIFICATION FOR THAT CERTAIN PROPERTY KNOWN AS THE
NORTH COLLEGE MOBILE HOME PARK REZONING

WHEREAS, Division 1.3 of the Fort Collins Land Use Code (the "Land Use Code") establishes the Zoning Map and Zone Districts of the City; and

WHEREAS, Division 2.9 of the Land Use Code establishes procedures and criteria for reviewing the rezoning of land; and

WHEREAS, City Council seeks to preserve and support existing manufactured housing communities in Fort Collins such as the North College Mobile Home Park; and

WHEREAS, the Planning and Zoning Commission voted at their March 23, 2023, hearing to recommend approval of the rezoning of the North College Mobile Home Park (the "Property") to City Council; and

WHEREAS, in accordance with the foregoing, the City Council has conducted a public hearing, considered the staff report, the Planning and Zoning Commission recommendation and findings, and evidence provided for and at the public hearing, and has determined that the Property should be rezoned as hereinafter provided; and

WHEREAS, the City Council finds that the proposed rezoning satisfies the requirements Division 2.9 of the Land Use Code as follows:

The rezoning is consistent with the City's Comprehensive Plan and is warranted by changed conditions within the neighborhood surrounding and including the Property; and

The proposed rezoning would be compatible with existing and proposed uses surrounding the Property and is the appropriate zone district for the Property; would not result in significant adverse impacts on the natural environment; and would result in a logical and orderly development pattern; and is in the best interests of the City.

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

Section 1. That the findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. That the Zoning Map adopted by Division 1.3 of the Land Use Code is hereby amended by changing the zoning classifications from Service Commercial (C-S) Zone

District and Low Density Mixed-Use Neighborhood (L-M-N) Zone District, to the Manufactured Housing (M-H) Zone District, for the following described Property in the City:

PARCEL 9702100021:
BEG AT PT 657.02 FT S OF NE COR OF NE 1/4 2-7-69, W 1320 FT M/L TO W LN OF E 1/2 OF NE 1/4, S 328.5 FT, E 1127.1 FT M/L TO W LN K BAR D SUB, N 219 FT, E 198.9 FT, N 109.5 FT TPOB; LESS ROW TO CITY PER 20140040137

PARCEL 9702100025:
BEG 492.76 FT S AND 240 FT W OF NE COR OF NE 1/4 2-7-69, S 164.25 FT, W 1127.1 FT TO W LN E 1/2 OF NE 1/4, N 164.25 FT, E 1127.1 FT TPOB (AD), FTC; ALSO POR NE 1/4 OF NE 1/4 2-7-69 LYING S OF FOL DESC LN: COM E 1/16 COR

PARCEL 9702100028:
BEG AT N 1/4 COR 2-7-69, TH ALG N LN S 89 59' E 1317 FT TO NE COR OF W 1/2 OF NE 1/4, TH ALG E LN OF W 1/2 OF NE 1/4 S 0 3' 20" W 405 FT TPOB, TH CONT ALG SD E LN S 0 3' 20" W 1956.97 FT, N 89 59' W 2.67 FT M/L TO ERLY L

Section 3. That the City Manager is hereby authorized and directed to amend the Zoning Map in accordance with this Ordinance.

Section 4. That the Sign District Map adopted pursuant to Section 3.8.7.1(M) of the Land Use Code is hereby changed and amended by showing that the above-described Property is included in the Residential Neighborhood Sign District.

Section 5. That the Lighting Context Area Map adopted pursuant to Section 3.2.4(H) of the Land Use Code is hereby changed and amended by showing that the above-described Property is included in the LC1 Lighting Context Area.

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 on this 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Spencer M. Smith, Special Projects Engineer
Monica Martinez, Financial Planning and Analysis Manager
Heather N. Jarvis, Legal

SUBJECT

Second Reading of Ordinance No. 069, 2023, Making Supplemental Appropriations, Appropriating Prior Year Reserves, and Authorizing Transfers of Appropriations for the West Elizabeth Corridor Final Design and Related Art in Public Places.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 2, 2023, appropriates local match funds and enables the City to receive and expend Federal and Colorado Department of Transportation (CDOT) funds to proceed forward with the Project. The funds will be used for the final 100% design and outreach regarding improvements along West Elizabeth Street from Mason Street and the Colorado State University (CSU) campus to Overland Drive. If adopted, the following amounts will be appropriated: (1) $651,628 from Transportation Capital Expansion Fee and unanticipated revenue from Transfort funds; (2) $616,124 of matching CSU-provided funds; and (3) $1,232,248 of Multi-Modal Options Funding grant funds for the Project. The amount of $6,516 will be appropriated to the Art in Public Places Program.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The West Elizabeth travel corridor is currently the highest priority pedestrian and alternative travel mode area for improvement in the City and was highlighted in City Plan and the Transit Master Plan. The vision for the West Elizabeth Street enhanced travel corridor is to be an easily accessible and reliable multimodal corridor with an emphasis on connectivity (including bus rapid transit stations) between CSU's Foothills Campus on the west and CSU's Main Campus on the east. The corridor will be well-integrated and well-connected within the City, with a focus on improving transit, walking, and biking. The corridor will foster existing business and future infill and redevelopment to accommodate the growing number and diversity of users in the corridor, which include students, families, commuters, and seniors.

The City was awarded a $1,232,248 Multi-Modal Options Funding (MMOF) grant from the North Front Range Metropolitan Planning Organization (NFRMPO) for final design of the Project. The grant award requires a local match of $1,232,248. CSU has committed to funding 50% of the local match requirement and has appropriated $616,124 for that purpose. The City will be required to contribute 50% of the local match funds as well as the local overmatch funds. The local overmatch is the difference between the grant award plus the local match and the total 100% design cost estimate. This total Project estimate is $2,500,000. The City's financial commitment to the final design will be $616,124 in local match funds and $35,504 in local overmatch funds for a total of $651,628. Funds from the Transportation Capital Expansion Fee (TCEF) and unanticipated revenue from Transfort will be used in equal amounts to support this supplemental appropriation request ($325,814 each).

This project involves estimated construction costs of more than $250,000, and under Section 23-304 of the City Code one percent of qualified appropriations are required to be transferred to the Cultural Services and Facilities Fund for a contribution to the Art in Public Places (APP) program. One percent of the total City local match, a total of $6,516, has been identified as the recommended transfer from the Capital Projects Fund to the Cultural Services and Facilities Fund to meet this APP requirement. Neither the MMOF grant, nor the CSU funding is eligible to be used for art and is excluded from the calculation.

CSU partnered with the City on the 30% design of the West Elizabeth Corridor and split the grant local match funding with the City for that design effort. CSU has agreed to continue a similar partnership and has committed to splitting the grant local match with the City for this Project as well. The CSU IGA documents and details this commitment. The CSU IGA is very similar to the IGA that was used for the 30% design phase.

The CDOT IGA is required because CDOT is administering the MMOF grant funds for the Project. CDOT administered the grant of state MMOF funds for the 30% design. This CDOT IGA (Amendment and Restatement No. 1) is an amendment and restatement of the IGA used for the 30% design. The Amendment and Restatement No. 1 format is necessary because the final design Project MMOF grant sources the monies from federal funds, adds American Rescue Plan Act funds, and includes contract provisions and exhibits required for projects using federal funds.

CITY FINANCIAL IMPACTS

This Ordinance seeks to appropriate MMOF (Multi-Modal Options Funding) grant funding, local match, local overmatch, and APP amounts. The following table is a summary of the funding sources for the West Elizabeth Corridor Final Design:

Funds to be Appropriated with this Action	**Amount**
Multi-Modal Options Funding (grant)	$1,232,248
CSU (½ of local match)	$616,124
TCEF (¼ of local match and ½ of overmatch)	$325,814
Transfort Unanticipated Revenue (¼ of local match and ½ of overmatch)	$325,814
Total Funds Projected for the Project	**$2,500,000**
Art in Public Places	$6,516

The required one percent to the Cultural Services and Facilities Fund ($6,516) will be appropriated to meet the Art in Public Places requirement in City Code Section 23-304.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Project was presented to the Council Finance Committee (CFC) on April 6, 2023. The CFC was in favor of staff bringing the Project to Council for the 100% design local match fund appropriations. Please note that the APP appropriation amount ($6,516) was not included in the presentation to CFC. The APP appropriation does not change the overall appropriation amount for the Project.

PUBLIC OUTREACH

The City worked with a consultant (Felsburg, Holt and Ullevig) to perform an extensive public outreach campaign during the 30% design process. The City will continue public outreach efforts throughout the Project.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 069, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING SUPPLEMENTAL APPROPRIATIONS, APPROPRIATING PRIOR YEAR RESERVES, AND AUTHORIZING TRANSFERS OF APPROPRIATIONS FOR THE WEST ELIZABETH CORRIDOR FINAL DESIGN AND RELATED ART IN PUBLIC PLACES

WHEREAS, the City has identified the West Elizabeth Street travel corridor as the highest priority pedestrian and alternative travel mode area for improvement in the City as highlighted in City Plan and the Transit Master Plan; and

WHEREAS, the vision for the West Elizabeth corridor is to be an easily accessible and reliable enhanced multimodal corridor with an emphasis on connectivity between the Colorado State University ("CSU") Foothills Campus on the west and CSU's Main Campus on the east; and

WHEREAS, the West Elizabeth corridor is further envisioned to focus on improving transit (including bus rapid transit stations), vehicle lanes, and walking and biking pathways; and

WHEREAS, the West Elizabeth corridor is further envisioned to foster existing business and future infill and redevelopment to accommodate the growing number and diversity of users in the corridor, which include students, families, commuters, and seniors; and

WHEREAS, in 2020, the City initiated the thirty percent design process for the West Elizabeth corridor pursuant to Resolution 2020-072, which authorized the execution of an intergovernmental agreement (the "IGA") with the Colorado Department of Transportation ("CDOT") for collaboration on the thirty percent design efforts, Resolution 2020-071, which authorized the execution of an IGA with CSU for collaboration on the thirty percent design efforts, and Ordinance No. 097, 2020, which appropriated the funding for the thirty percent design; and

WHEREAS, the thirty percent design process is complete, and the City seeks to proceed forward with the final 100% design and outreach regarding the improvements along West Elizabeth Street from Mason Street and the CSU campus to Overland Trail that comprise the West Elizabeth Corridor Final Design (the "Project"); and

WHEREAS, the City was awarded a $1,232,248 Multi-Modal Options Funding ("MMOF") grant from the North Front Range Metropolitan Planning Organization ("NFRMPO") for the Project, which grant is managed by CDOT, and CDOT has proposed an IGA with the City to fund the Project and to outline the terms and conditions of the use of the funds; and

WHEREAS, the MMOF grant award requires a local match of $1,232,248, half of which the City will provide from Transportation Capital Expansion Fee funds and unanticipated revenue from Transfort, and half of which CSU has committed to funding similar to its agreement for the thirty percent design, and for which CSU has appropriated $616,124 and has proposed an IGA with the City to confirm; and

WHEREAS, the City is adopting the proposed IGAs with CSU and CDOT simultaneously with this Ordinance to confirm the funding; and

WHEREAS, the total design cost estimate for the Project is $2,500,000; and

WHEREAS, the City will be required to contribute half of the local match funds as well as the local overmatch funds, which are the difference between the grant award plus the local match and the total design cost estimate, making the City's financial commitment to the final design $616,124 in local match funds plus $35,504 in local overmatch funds, for a total of $651,628; and

WHEREAS, this Project involves construction estimated to cost more than $250,000, and City Code Section 23-304 requires one percent of qualified appropriations to be transferred to the Cultural Services and Facilities Fund for a contribution to the Art in Public Places program (the "APP Program"); and

WHEREAS, a portion of the funds appropriated in this Ordinance for the Project are ineligible for use in the APP Program due to restrictions placed on them by the CDOT MMOF grant, and the CSU half local match; and

WHEREAS, the Project cost of $651,628 has been used to calculate the contribution to the APP Program; and

WHEREAS, the amount to be contributed in this Ordinance will be $6,516; and

WHEREAS, the purpose of this Ordinance is to enable the City to receive and expend the $1,232,248 in grant funds available, to appropriate those funds, the CSU half local match funds, Transportation Capital Expansion Fee funds, and Transit Services ("Transfort") funds for the Project, and to appropriate Capital Projects funds to satisfy the APP Program contribution requirement; and

WHEREAS, this appropriation benefits public health, safety, and welfare of the residents of Fort Collins and the traveling public and serves the public purpose by improving multimodal transportation infrastructure, safety, and accessibility within the City; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, does not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year of such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that these appropriations are available and previously unappropriated from the

Transportation Capital Expansion Fee Fund, the Transit Fund, and the Capital Projects Fund, as applicable, and will not cause the total amount appropriated in the Transportation Capital Expansion Fee Fund, the Transit Fund, or the Capital Projects Fund, as applicable, to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of $325,814 from the Transportation Capital Expansion Fee Fund to the Capital Projects Fund and the transfer of $325,814 from the Transit Fund to the Capital Projects Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a capital project or for a federal, state or private grant or donation, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the completion of the capital project or until the earlier of the expiration of the federal, state or private grant or donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriations herein for the Project and the MMOF grant as appropriations that shall not lapse until the completion of the Project or until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

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 there is hereby appropriated from new revenue or other funds from the MMOF grant in the Capital Projects Fund the sum of ONE MILLION TWO HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED FORTY-EIGHT DOLLARS ($1,232,248) to be expended in the Capital Projects Fund for the Project.

Section 3. That there is hereby appropriated from new revenue or other funds from the CSU Half Local Match funds in the Capital Projects Fund the sum of SIX HUNDRED SIXTEEN THOUSAND ONE HUNDRED TWENTY-FOUR DOLLARS ($616,124) to be expended in the Capital Projects Fund for the Project.

Section 4. That there is hereby appropriated from prior year reserves in the Transportation Capital Expansion Fee Fund the sum of THREE HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED FOURTEEN DOLLARS ($325,814) and to be expended in the Transportation Capital Expansion Fee Fund for transfer to the Capital Projects Fund and appropriated therein to be expended for the Project.

Section 5. That there is hereby appropriated from new revenue or other funds in the Transit Services Fund the sum of THREE HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED FOURTEEN DOLLARS ($325,814) to be expended in the Transit Services Fund for transfer to the Capital Projects Fund and appropriated therein to be expended for the Project.

Section 6. That the unexpended and unencumbered appropriated amount of FIVE THOUSAND EIGHTY-THREE DOLLARS ($5,083) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 7. That the unexpended and unencumbered appropriated amount of ONE THOUSAND THREE HUNDRED THREE DOLLARS ($1,303) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 8. That the unexpended and unencumbered appropriated amount of ONE HUNDRED THIRTY DOLLARS ($130) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 9. That the appropriations herein for the Project are hereby designated, as authorized in Article V, Section 11 of the City Charter, as appropriations that shall not lapse at the end of this fiscal year but shall continue until the completion of the Project.

Section 10. That the appropriation herein from the MMOF grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but shall continue until the completion of the Project or the earlier of the expiration of the grant or the City’s expenditure of all funds received from such grant.

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

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Tim Dinger, Civil Engineer II
John Gerwel, Civil Engineer I
Aaron Guin, Legal

SUBJECT

Second Reading of Ordinance No. 070, 2023, Vacating a Portion of Impala Circle Right-of-Way.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on May 2, 2023, approves the vacation of Impala Circle right-of-way that is no longer desirable or necessary to retain for street purposes. Portions of the right-of-way area, once vacated, will be retained as public access and emergency access easements to the City to provide continued access for the neighboring properties.

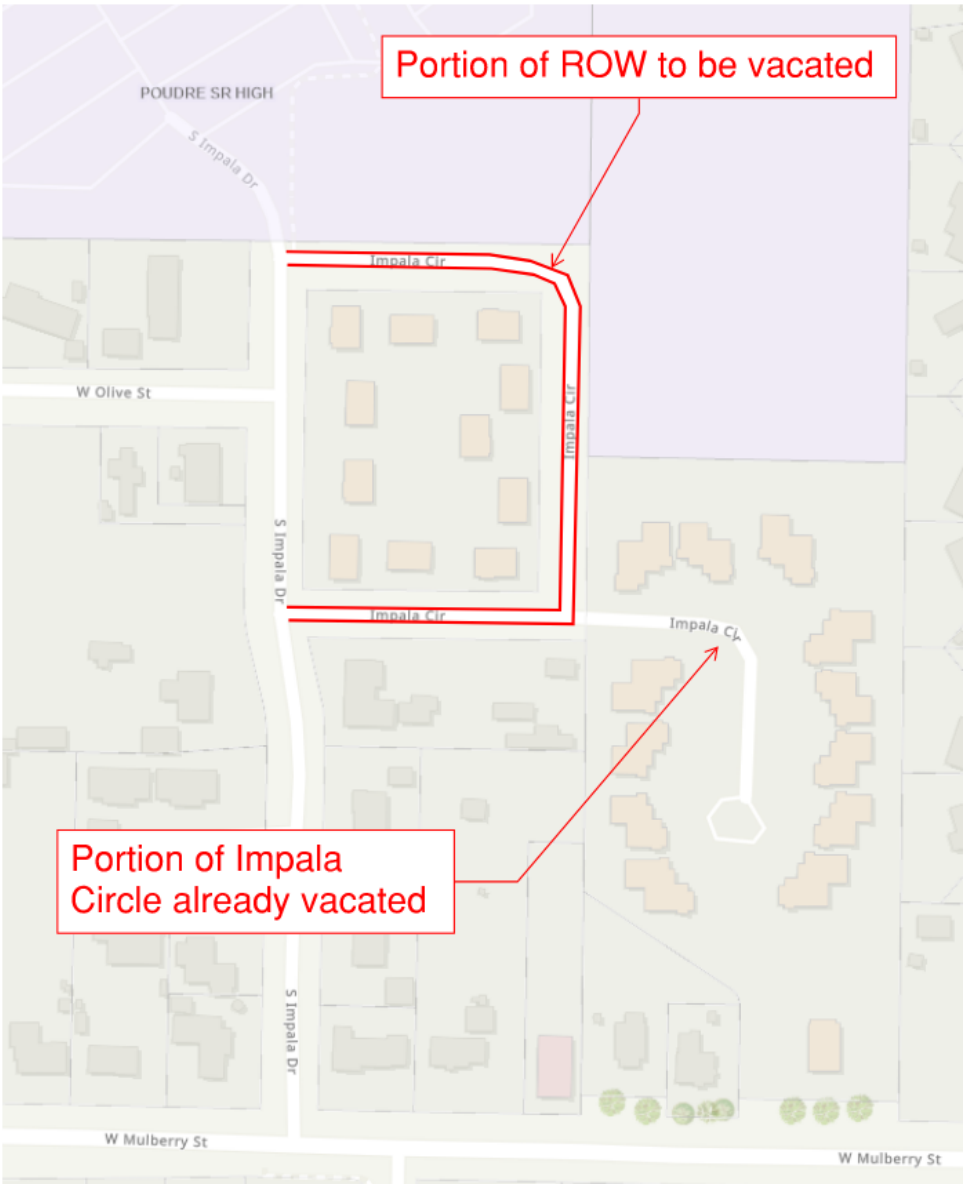
STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The portion of Impala Circle right-of-way is no longer desirable or necessary to retain for street purposes because the street does not provide street connectivity, and the dedication of public access easements to the City will fulfill the function of Impala Circle. Impala Circle currently does not meet Larimer County Urban Area Street Standards for minimum right-of-way width. Figure 1, below, shows an area map of the surrounding street network. The area of the vacated right-of-way will be dedicated to the City as a public access and emergency access easement. The City Engineer and the Director of Planning, Development and Transportation recommend vacating the right-of-way.

Figure 1. Area Map



CITY FINANCIAL IMPACTS

The City will have a net decrease of approximately 44,000 square feet of right-of-way to maintain with the vacation of the Impala Circle right-of-way.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Not applicable.

PUBLIC OUTREACH

In accordance with Section 23-115 of the City Code, potentially affected utility agencies, staff, and emergency service providers have been notified of the request for right-of-way vacation. Additionally, owners of adjacent properties in the vicinity, located at 408 Impala, 201 Impala and 400 Impala, have been notified of the proposed right-of-way vacation. Notification to the adjacent property owners includes a statement that the first reading of this Ordinance is scheduled for the Council meeting scheduled for May 2, 2023.

ATTACHMENTS

1. Ordinance for Consideration
2. Ordinance Exhibit A

ORDINANCE NO. 070, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
VACATING A PORTION OF IMPALA CIRCLE RIGHT-OF-WAY

WHEREAS, the plat of the Impala Subdivision included dedication to the public of right-of-way for Impala Circle; and

WHEREAS, Housing Catalyst Development Services, LLC, has requested that the City vacate the Impala Circle right-of-way; and

WHEREAS, pertinent City staff, potentially affected utility companies, and affected property owners in the vicinity of the right-of-way have been contacted and no objection has been reported to the proposed vacation; and

WHEREAS, the City Engineer and the Director of Community Development and Neighborhood Services recommend that the right-of-way be vacated; and

WHEREAS, portions of the right-of-way area, once vacated, shall be dedicated to the City, upon recording of the subdivision plat for "Impala Redevelopment," as public access and emergency access easements to provide continued access for neighboring properties; and

WHEREAS, the rights of the residents of Fort Collins will not be prejudiced or injured by the vacation of said street right-of-way; and

WHEREAS, said right-of-way is no longer necessary or desirable to retain for street purposes.

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 the City Council hereby finds and determines that the street right-of-way for Impala Circle, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Specified Street") is no longer needed for right-of-way purposes and that it is in the public interest to vacate the same.

Section 3. That the Specified Street is hereby vacated, abated and abolished, provided, that:

1) This vacation shall not take effect until this Ordinance is recorded with the Larimer County Clerk and Recorder.

2) This Ordinance shall be recorded concurrently with the subdivision plat for the development known as "Impala Redevelopment."

3) If this Ordinance is not recorded by December 31, 2023, then this Ordinance shall become null and void and of no force and effect.

Introduced and 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

EXHIBIT A

NORTHERN ENGINEERING

DESCRIPTION:

Impala Circle, Impala Subdivision, recorded as Book 1597, Page 700 of the Records of Larimer County and situate within the Southeast Quarter of Section Nine (9), Township Seven North (T.7N.), Range Sixty-nine West (R.69W.) of the Sixth Principal Meridian (6th P.M.), City of Fort Collins, County of Larimer, State of Colorado

The above-described parcel of land contains 44,038 square feet or 1.011 acres, more or less (±), and may be subject to easements and rights-of-way now on record or existing.

Exhibit attached hereto and made a part hereof.

SURVEYOR'S CERTIFICATE

I, Robert C. Tessely, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.



Robert C. Tessely – for and on behalf of Northern Engineering
Colorado Registered Professional Land Surveyor #38470

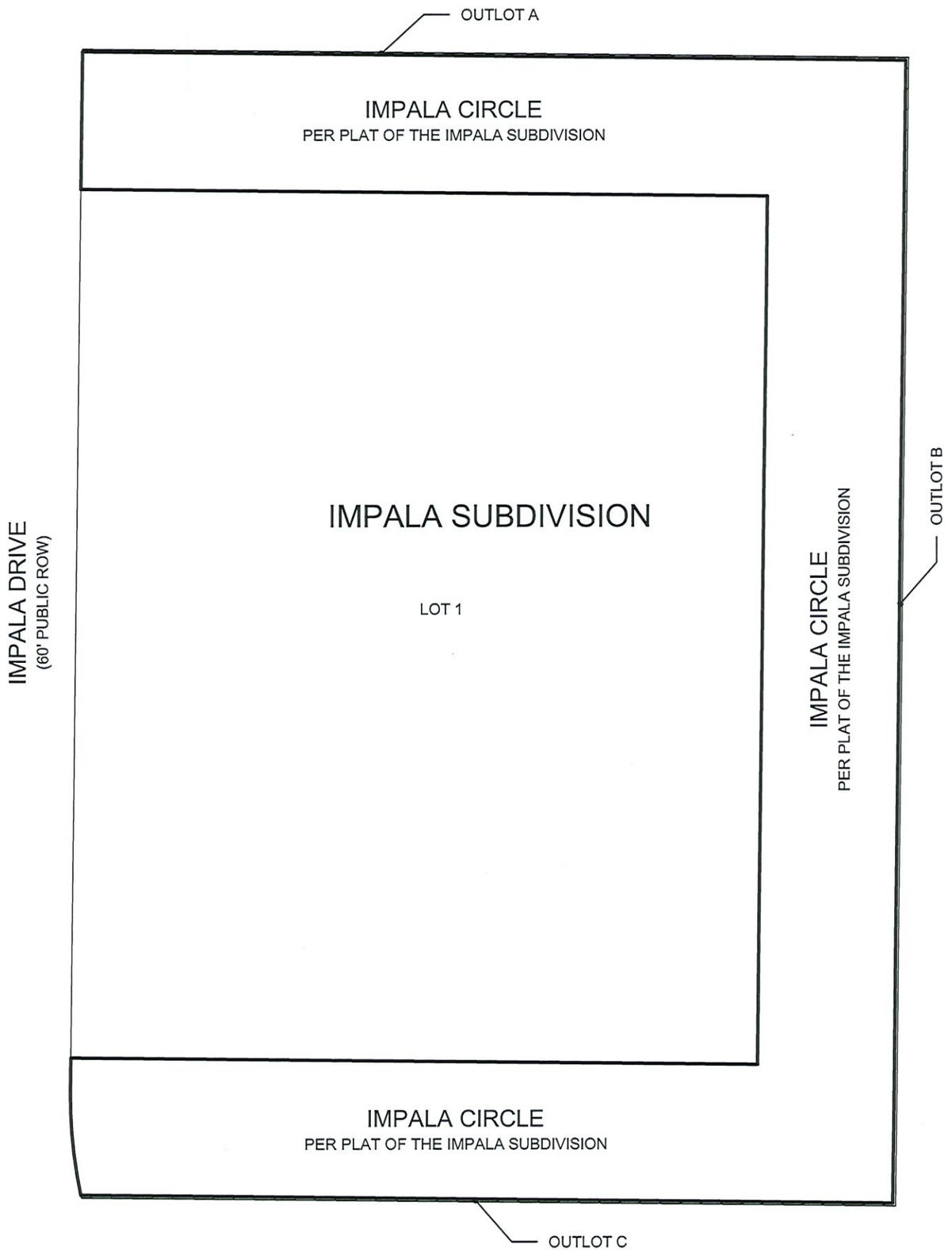
NORTHERN ENGINEERING
301 North Howes Street, Suite 100
Fort Collins, Colorado 80521
(970) 221-4158

April 5, 2023
LMS
S:\Survey Jobs\1914-001\Dwg\Exhibits\1914-001 Description.docx

EXHIBIT A

EXHIBIT

IMPALA CIRCLE, IMPALA SUBDIVISION, LOCATED IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6th P.M., CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO



COLORADO LICENSED
ROBERT C. TESSELY
38470
PROFESSIONAL LAND SURVEYOR
4-5-23

NOTE: THIS EXHIBIT IS NOT INTENDED TO BE A MONUMENTED LAND SURVEY. ITS SOLE PURPOSE IS AS A GRAPHIC REPRESENTATION TO AID IN THE VISUALIZATION OF THE WRITTEN PROPERTY DESCRIPTION WHICH IT ACCOMPANIES. THE WRITTEN PROPERTY DESCRIPTION SUPERCEDES THE EXHIBIT DRAWING.

50 0 50 Feet

(IN U.S. SURVEY FEET)
1 inch = 50 ft.

NORTHERN ENGINEERING
SURVEY | MUNICIPAL | LAND DEVELOPMENT
FORT COLLINS | GREELEY 970.221.4158 NORTHERNENGINEERING.COM

PAGE 2 OF 2

S:\SURVEY JOBS\1914-001\DWG\EXHIBITS\1914-001 EXHIBIT.DWG

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

John Gerwel – Civil Engineer I
Brad Yatabe, Legal

SUBJECT

First Reading of Ordinance No. 072, 2023, Authorizing the Disposition of a Portion of a Shared Parking Easement and the Execution of an Amendment to the Shared Parking and Access Easement Deed and Agreement.

EXECUTIVE SUMMARY

The purpose of this item is to approve the reduction of a shared parking and access easement previously dedicated to the City and to authorize the execution of an amendment to the agreement that granted such easement. City Code Section 23-111 requires City Council authorization to sell, convey, exchange, or otherwise dispose of any and all interests in real property, including easements, owned in the name of the City. The original agreement was to allow for shared parking and access on the property located at the northwest corner of Drake Road and College Avenue for users of the MAX bus line. The goal for amending the shared parking space is to add an additional area for shared parking and additional parking spaces and to revise the original boundary so that it better conforms with proposed development's parking lot layout.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In 2014, at the request of the City of Fort Collins, Dillon Companies, Inc. (d/b/a Dillon Companies, LLC, the "Developer") allocated 37,525 square feet containing 60 parking spaces as shared parking for their customers and commuters of the MAX bus line at the northwest corner of College Avenue and Drake Road (See Figure 1). The Developer has since submitted plans to redevelop the same overall parcel into a King Soopers grocery store. City staff and the Developer have agreed to modify the boundary of the existing shared parking area and add an additional space for shared parking that will increase the amount of shared parking spaces to 94. The boundary of the original parking area requires amending in order to accommodate for modified drive aisles within the Development's proposed parking lot layout, and to better capture the parking spaces in the new layout. Even though the new shared parking area will result in a net gain of shared parking spaces for the City, the original area will slightly decrease size. Per City Code 23-111, the loss of easement space in the original boundary necessitates approval from City Council. The conditions of the original agreement will remain, and the City will not assume any additional burdens of maintenance. Approval of this Ordinance will allow for the original boundary to be amended and reduced, and the new dedicated space to be incorporated into the original agreement. See Figure 2 for the comparison for the original shared area compared to the proposed amended parking area.

Figure 1. Area Map

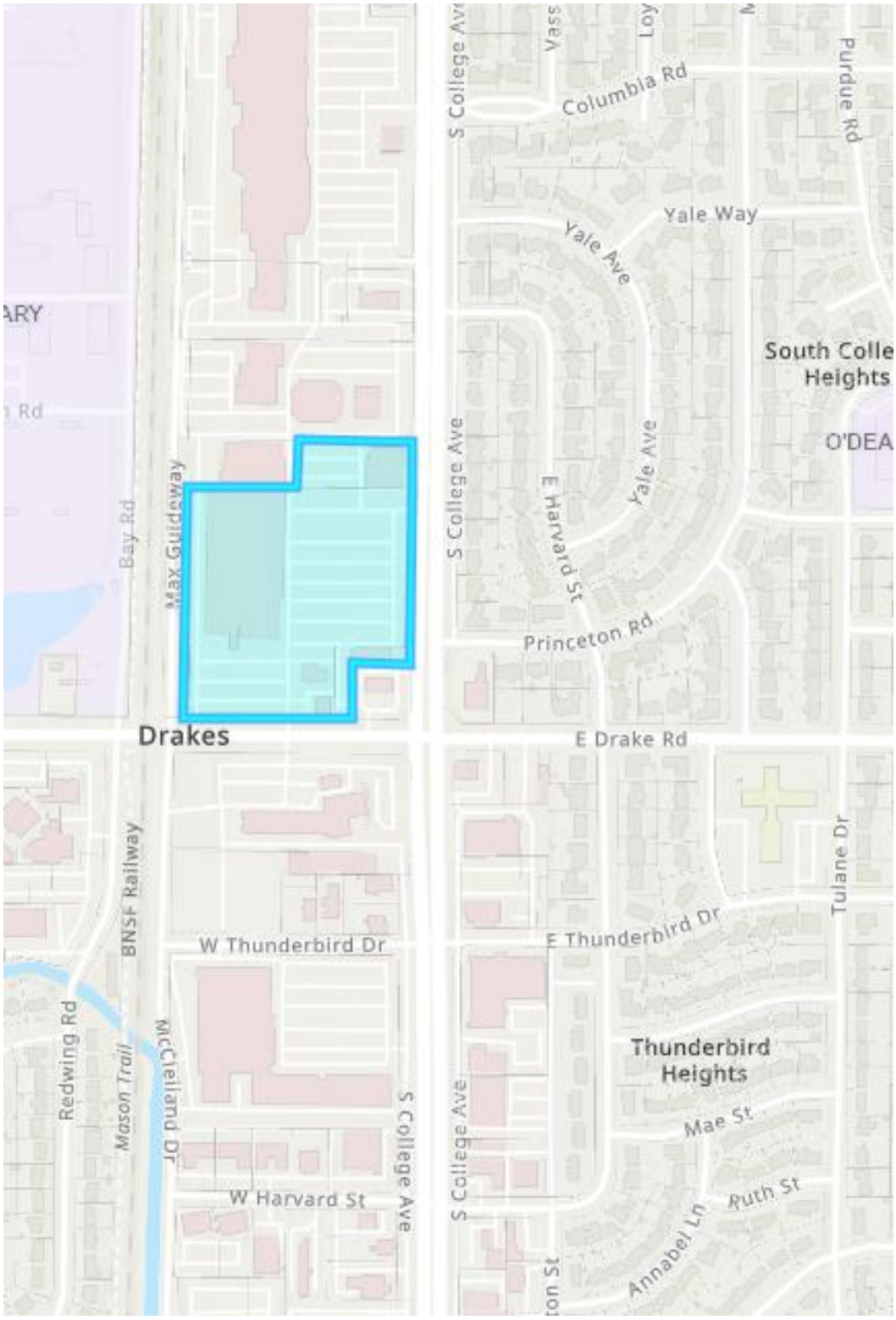
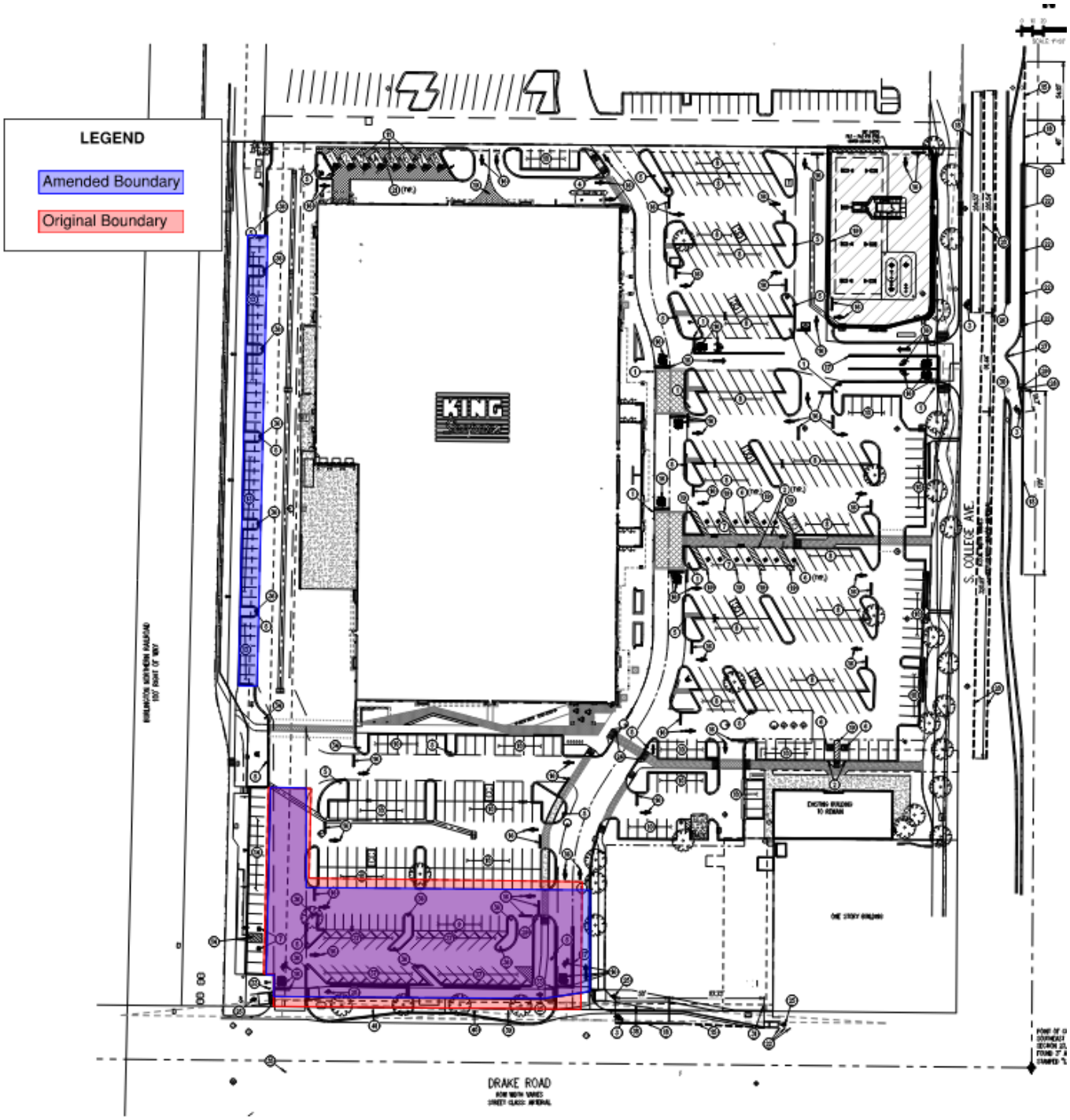


Figure 2. Proposed Shared Parking Area Versus Original Shared Parking Area



CITY FINANCIAL IMPACTS

The expansion of this easement will not result in any financial impacts to the City.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Not applicable.

PUBLIC OUTREACH

No public outreach was conducted related to the changes to the shared parking easement. It should be noted that during the neighborhood meeting for the redevelopment of this site community members expressed concerns over the lack of parking supply for MAX riders in this location. The additional shared parking was negotiated as part of the development review process and is intended to help serve future riders.

ATTACHMENTS

1. Ordinance for Consideration
2. Ordinance Exhibit A
3. Original Shared Parking and Access Agreement

ORDINANCE NO. 072, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE DISPOSITION OF A PORTION OF A SHARED PARKING EASEMENT AND THE EXECUTION OF AN AMENDMENT TO THE SHARED PARKING AND ACCESS EASEMENT DEED AND AGREEMENT

WHEREAS, City Code Section 23-111 requires City Council authorization to sell, convey, exchange, or otherwise dispose of any and all interests in real property, including easements, owned in the name of the City; and

WHEREAS, in 2014, the City and Dillon Companies, LLC, executed the *Shared Parking and Access Easement Deed and Agreement* (the "Agreement"), Larimer County Clerk & Recorder Reception #20140048657, for sixty parking spaces for users of the Mason Corridor MAX/BRT Project on the property located at the northwest corner of Drake Road and College Avenue (the "Property"); and

WHEREAS, the City and Dillon Companies, LLC, wish to reduce the size of the original easement by approximately 1,500 sq. ft. but provide additional easement area in another portion of the Property and thirty-four additional parking spaces; and

WHEREAS, the reduction of the original easement along with the provision of additional easement area and additional parking spaces constitutes an exchange of the City's interest in real property requiring City Council authorization; and

WHEREAS, the City and Dillon Companies, LLC, have drafted an amendment to the Agreement (the "Amendment") to formalize such exchange; and

WHEREAS, City Council finds that the exchange is in the best interests of the City because the reduction in the original easement is more than offset by the additional easement area and parking spaces provided for users of the Mason Corridor MAX/BRT Project.

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 the conveyance and exchange of the easement on the Property as provided herein is in the best interests of the City.

Section 3. That the City Manager is hereby authorized to execute the Amendment attached hereto and incorporated herein as Exhibit "A" to exchange the easement on terms and conditions consistent with this Ordinance, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City, including, but not limited, any necessary changes to the legal

description of the easement, as long as such changes do not materially decrease the size or change the character of the easement.

Introduced, considered favorably on first reading and ordered published this 16th day of May, 2023, and to be presented for final passage on the 6th day of June, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 6th day of June, 2023.

Mayor

ATTEST:

City Clerk

AMENDMENT TO SHARED PARKING AND ACCESS EASEMENT DEED AND AGREEMENT

THIS AMENDMENT TO SHARED PARKING AND ACCESS EASEMENT DEED AND AGREEMENT ("Amendment"), dated _____, 2023, is entered into by and between DILLON COMPANIES, LLC, a Kansas limited liability company f/k/a DILLON COMPANIES, INC., a Kansas corporation ("Grantor") and THE CITY OF FORT COLLINS, COLORADO, a municipal corporation ("Grantee").

Recitals:

A. Grantor and Grantee entered into a Shared Parking and Access Easement Deed and Agreement on May 29, 2014 and recorded with the Larimer County Clerk and Recorder's on August 28, 2014 at Reception No. 20140048657 (the "Agreement"). (Initially capitalized terms not defined herein have the same meaning as in the Agreement); and

B. Grantor and Grantee have agreed to revise the shared parking areas on the Property;

C. Grantor and Grantee desire to amend the Agreement in the manner and form herein set forth.

NOW, THEREFORE, for good and valuable consideration, Grantor and Grantee hereby agree as follows:

1. BRT Easement Tract. The BRT Easement Tract is amended to add 34 spaces, for a total of 94 spaces, legally described on Exhibit A and depicted on Exhibit B attached hereto and to revise and amend the area of the initial spaces granted to that legally described on Exhibit C and depicted on Exhibit D attached hereto.

2. Parking Spaces. Paragraph 2 is amended to expand the number of Parking Spaces to a total of 94.

3. Grantor's Rights in Easement Area. Paragraph 4 is amended to reflect the expansion of Parking Spaces and the minimum number of spaces is 94.

4. Full Force and Effect. Except as amended herein, all terms and conditions of the Agreement shall continue in full force and effect. The Agreement is hereby ratified and affirmed by the parties, and is binding upon the parties in accordance with its terms.

5. Counterparts. This Amendment may be executed in counterparts which when taken together shall constitute one document.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first written above.

[SIGNATURE PAGES FOLLOW]

GRANTOR:

DILLON COMPANIES, LLC, a
Kansas limited liability company

By: _____

Its: _____

Date: _____

STATE OF OHIO)
)ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____ as _____ of Dillon Companies, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

GRANTEE:

THE CITY OF FORT COLLINS, COLORADO, a
Municipal corporation

By: _____

Its: _____

Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

STATE OF COLORADO)
)ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____ as _____ of the City of Fort Collins, Colorado, a municipal corporation.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

IT A TO ORDINANCE NO. 072, 2023

Exhibit A

LEGAL DESCRIPTION
SHARED PARKING EASEMENT

A SHARED PARKING EASEMENT OVER PART OF LOT 2, EXTENSION OF K-MART PLAZA PLAT, RECORDED AT BOOK 5, PAGE 4 AND PART OF TRACT 2, K-MART PLAZA PLAT, RECORDED AT BOOK K, PAGE 3 AND PART OF A TRACT DEEDED TO DILLION COMPANY INC., RECORDED AT RECEPTION NO. 20140048658, ALL RECORDED IN THE LARIMER COUNTY CLERK AND RECORDER'S OFFICE, ALL LOCATED IN PART OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6TH P.M., CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO, SAID EASEMENT DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2;

THENCE S01°22'03"W, A DISTANCE OF 87.39 FEET ON THE WEST LINE OF SAID LOT 2;

THENCE S88°37'57"E, A DISTANCE OF 16.96 FEET, MEASURED PERPENDICULAR TO SAID WEST LINE, TO THE POINT OF BEGINNING;

THENCE S88°40'35"E, A DISTANCE OF 15.50 FEET;

THENCE S01°19'25"W, A DISTANCE OF 415.00 FEET;

THENCE N88°40'35"W, A DISTANCE OF 15.50 FEET;

THENCE N01°19'25"E, A DISTANCE OF 415.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 6,432 SQUARE FEET OR 0.148 ACRES.

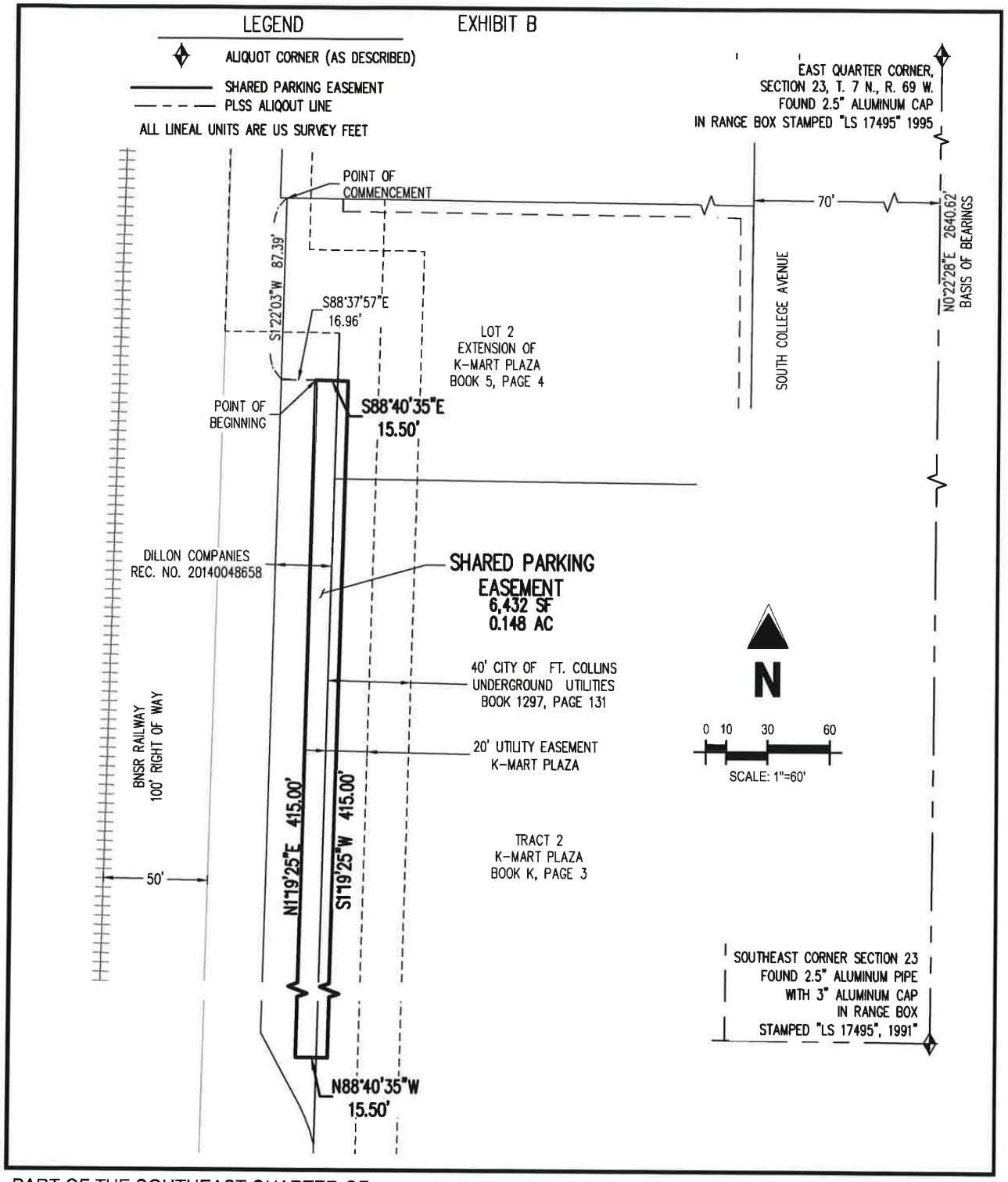
BASIS OF BEARING: THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, IS ASSUMED TO BEAR NORTH 00°22'28" EAST, A DISTANCE OF 2640.62 FEET, MONUMENTED AT THE SOUTH END BY A 2-5" ALUMINUM PIPE WITH 3" ALUMINUM CAP IN A RANGE BOX STAMPED LS 17495, 1991 AND MONUMENTED AT THE NORTH END BY A 2.5" ALUMINUM CAP IN A RANGE BOX, STAMPED LS 17495, 1995, WITH ALL OTHER BEARINGS REFERENCED THERETO.

EXHIBIT B IS ATTACHED HERETO AND IS ONLY INTENDED TO DEPICT EXHIBIT A - LEGAL DESCRIPTION. IN THE EVENT THAT EXHIBIT A CONTAINS AN AMBIGUITY, EXHIBIT B MAY BE USED TO RESOLVE SAID AMBIGUITY.



PREPARED FOR AND ON BEHALF OF GALLOWAY
BY FRANK A. KOHL, PLS# 37067
November 30, 2022
H:\King Soopers - City Market\CO, Fort Collins - KSS000146 -#18 College & Drake\Survey\Documents\Legal Descriptions\KSS146-SharedParkingEasement-West.doc

IT A TO ORDINANCE NO. 072, 2023



PART OF THE SOUTHEAST QUARTER OF SECTION 23, T. 7 N., R. 69 W. OF THE 6TH P.M.

CITY OF FORT COLLINS, COUNTY OF LARIMER, COLORADO

SHARED PARKING EASEMENT EXHIBIT

Project No:	KSS000018.02
Drawn By:	AN
Checked By:	FAK
Date:	11/30/2022

Galloway
5265 Ronald Reagan Blvd., Suite 210
Johnstown, CO 80534
970.800.3300 • Gallowayus.com

IT A TO ORDINANCE NO. 072, 2023

Exhibit C

LEGAL DESCRIPTION
SHARED PARKING EASEMENT

A SHARED PARKING EASEMENT OVER PART OF TRACT 2, K-MART PLAZA PLAT, RECORDED AT BOOK K PAGE 3 RECORDED IN THE LARIMER COUNTY CLERK AND RECORDER'S OFFICE, LOCATED IN PART OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6TH P.M., CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO, SAID EASEMENT DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT 2;

THENCE N89°27'52"W, A DISTANCE OF 119.21 FEET ON THE SOUTH LINE OF SAID TRACT 2;

THENCE N00°32'08"E, A DISTANCE OF 16.62 FEET TO THE NORTH RIGHT-OF-WAY LINE OF DRAKE STREET AND POINT OF BEGINNING;

THENCE S81°27'51"W, A DISTANCE OF 44.12 FEET ON SAID NORTH RIGHT-OF-WAY LINE TO AN ANGLE POINT THEREIN;

THENCE N89°31'52"W, A DISTANCE OF 249.71 FEET CONTINUING ON SAID NORTH RIGHT-OF-WAY LINE TO THE EAST LINE OF A TRACT DEEDED TO THE CITY OF FORT COLLINS AT RECEPTION NO. 20140048667;

THENCE ON SAID EAST LINE FOR THE FOLLOWING THREE (3) COURSE;

1. THENCE N01°41'18"E, A DISTANCE OF 19.83 FEET;
2. THENCE N88°54'47"W, A DISTANCE OF 7.28 FEET;
3. THENCE N01°22'06"E, A DISTANCE OF 173.39 FEET;

THENCE S88°39'54"E, A DISTANCE OF 33.02 FEET;

THENCE S00°04'39"E, A DISTANCE OF 91.71 FEET;

THENCE S89°28'09"E, A DISTANCE OF 262.80 FEET;

THENCE S00°01'32"W, A DISTANCE OF 93.89 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 33,065 SQUARE FEET OR 0.759 ACRES.

BASIS OF BEARING: THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO, IS ASSUMED TO BEAR NORTH 00°22'28" EAST, A DISTANCE OF 2640.62 FEET, MONUMENTED AT THE SOUTH END BY A 2-5" ALUMINUM PIPE WITH 3" ALUMINUM CAP IN A RANGE BOX STAMPED LS 17495, 1991 AND MONUMENTED AT THE NORTH END BY A 2.5" ALUMINUM CAP IN A RANGE BOX, STAMPED LS 17495, 1995, WITH ALL OTHER BEARINGS REFERENCED THERETO.

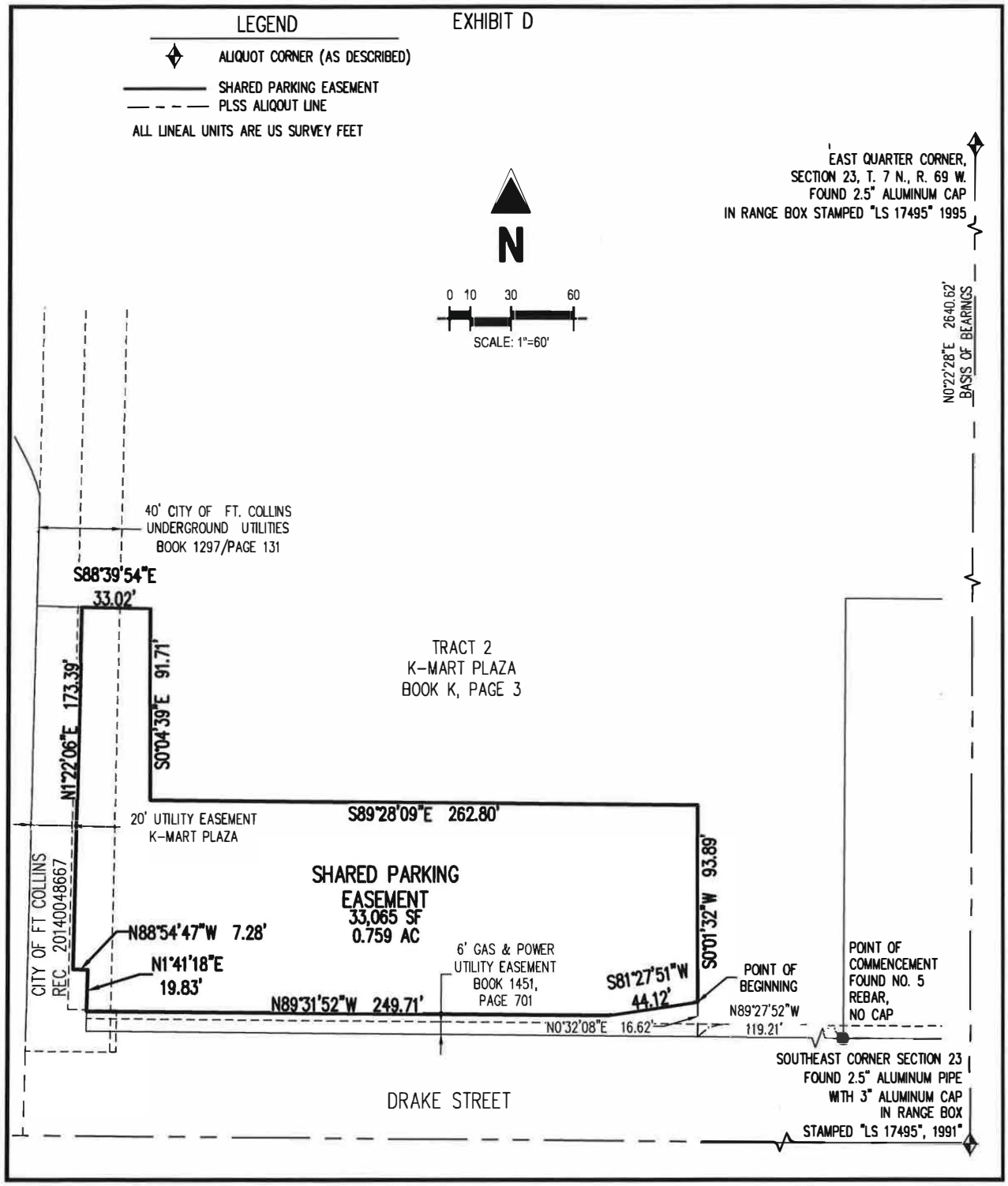
EXHIBIT D IS ATTACHED HERETO AND IS ONLY INTENDED TO DEPICT EXHIBIT C - LEGAL DESCRIPTION. IN THE EVENT THAT EXHIBIT C CONTAINS AN AMBIGUITY, EXHIBIT D MAY BE USED TO RESOLVE SAID AMBIGUITY.



PREPARED FOR AND ON BEHALF OF GALLOWAY
BY FRANK A. KOHL, PLS# 37067

April 11, 2023
H:\King Soopers - City Market\CO, Fort Collins - KSS000146 -#18 College & Drake\Survey\Documents\Legal Descriptions\KSS146-SharedParkingEasement-Southt.doc

IT A TO ORDINANCE NO. 072, 2023



PART OF TRACT 2, K-MART PLAZA, LOCATED
IN THE SOUTHEAST QUARTER OF SECTION 23
T. 7 N., R. 69 W. OF THE 6TH P.M. FORT COLLINS, LARIMER COUTY, CO

SHARED PARKING EASEMENT EXHIBIT

Project No:	KSS000018.02
Drawn By:	AN
Checked By:	FAK
Date:	4/11/2023

Galloway
5265 Ronald Reagan Blvd., Suite 210
Johnstown, CO 80534
970.800.3300 • GallowayUS.com

Item 6.

EPTION#: 20140048657, 08/28/2014 at 08:52:33 AM, 1 OF 11, R $61.00 TD Pgs: 0
Angela Myers, Clerk & Recorder, Larimer County, CO

SHARED PARKING AND ACCESS EASEMENT DEED AND AGREEMENT

THIS SHARED PARKING AND ACCESS EASEMENT DEED AND AGREEMENT ("Agreement") is made and entered into this 29 day of May, 2014 (the "Effective Date"), by and between **DILLON COMPANIES, INC.**, a Kansas corporation, ("Grantor"), and **THE CITY OF FORT COLLINS, COLORADO,** a municipal corporation, ("Grantee").

Recitals

A. Grantor is the owner of that certain parcel of real property located in Larimer County, Colorado, which is legally described on **Exhibit A**, consisting of 1 page, attached to and made a part of this Agreement (the "Property").

B. Grantee is in the process of constructing the Mason Corridor MAX/BRT Project (the "Project") for the purpose of establishing a public mass transit system serving a portion of the City of Fort Collins, Colorado. The Project will run, in part, adjacent to the Property.

C. Grantee has requested that Grantor grant a non-exclusive shared parking and access easement to that portion of the Property more fully described and depicted in the attached **Exhibit B**, consisting of 2 pages, attached to and made a part of this Agreement, to which reference is here made for all purposes (the "BRT Easement Tract").

D. Grantor has agreed to grant to Grantee a non-exclusive shared parking and access easement and related rights on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree:

1. Grant of Easement – Consideration. For and in consideration of the covenants and agreements herein set forth, the sum of **Ten Dollars ($10.00)**, and other good and valuable consideration, the receipt and adequacy of which Grantor acknowledges, the Grantor grants, sells and conveys to the Grantee, its successors and assigns, a perpetual, non-exclusive shared parking and access easement (the "Easement") on, over, and across the BRT Easement Tract, subject to the conditions and restrictions set forth below.

2. Purpose and Uses of Easement Area. Grantee may use the BRT Easement Tract for sixty (60) spaces to provide for public parking to accommodate users of Grantee's MAX Bus Rapid Transit (BRT) system and related facilities (the "Parking Spaces"), and for access to such parking by Grantee and the public, on, over, and across the BRT Easement Tract. This use is non-exclusive, and Grantor's patrons and invitees have a shared right for access and to use the Parking Spaces within the BRT Easement Tract. Persons using the Parking Spaces will not be charged a

Land Title 25083785.1

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rk & Recorder, Larimer County, CO

fee for such use. The area of the Parking Spaces provided for herein will be identified by appropriate signage to indicate the appropriate number and location of the Parking Spaces.

3. Additional Rights of Grantee. In addition to the non-exclusive right to use the BRT Easement Tract as set forth herein, Grantor further grants to Grantee:

(a) The right to install and maintain signage, at Grantee's expense, to designate and distinguish the Parking Spaces within the BRT Easement Tract as being available for users of the Project.

(b) The right to improve or maintain the Parking Spaces, at Grantee's expense, to current or future city standards, if at any time the condition of the Parking Spaces does not meet or exceed applicable city standards.

4. Grantor's Rights in Easement Area. Grantor reserves the right to use the BRT Easement Tract for access and parking as set forth in Paragraph 2 of this Agreement and for other purposes which will not interfere with Grantee's full enjoyment of the rights hereby granted. If Grantor or one of its affiliates is operating from the Property, Grantor will not permit the BRT Easement Tract to be designated for employee parking or a parking area for delivery vehicles. Grantor may revise the location of parking spaces and access lanes within the BRT Easement Tract as long as a minimum of sixty (60) spaces are maintained and reasonable vehicular access is maintained.

5. Maintenance of the BRT Easement Tract.

(a) Grantor or its lessee will maintain the surface of the BRT Easement Tract in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements.

(b) Grantor will not deposit, or permit or allow to be deposited, earth, rubbish, debris, or any other substance or material, whether combustible or noncombustible, on the BRT Easement Tract.

(c) Grantor or its lessee shall maintain the Parking Spaces including snow removal, lighting, and all repairs and maintenance, to the same extent that Grantor or its lessee maintain other parking areas on the Property.

6. Representations of Grantor. Grantor states that it is the lawful owner in fee simple of the Property; that it has good and lawful right and authority to grant, sell and convey the Property or any part thereof; and that it will warrant the title of the Property subject to those exceptions listed on **Exhibit C**, consisting of 1 page, attached to and made a part of this Agreement. Grantor represents and warrants that the beneficiary of any deed of trust, mortgage, lien or other obligation secured by an interest in the Property and of any tenant in possession has consented to and subordinated its interest in the Property to the Easement granted hereunder.

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7. Liability. For the purpose of this Agreement, the Grantee, its employees, contractors, and customers using the BRT Easement Tract are considered licensees within the meaning of Section 13-21-115, Colorado Revised Statues, for purposes of establishing the Grantor's standard of care. Nothing contained in this Agreement is intended to impose a standard of care higher than that set forth in Section 13-21-115, as amended, or to be construed as a waiver of governmental immunity under Section 24-10-101, et.seq., Colorado Revised Statues.

8. Termination of Agreement. As set forth above, the rights of Grantee created herein are intended to be perpetual, provided, however: (i) this Agreement may be terminated by an appropriate writing signed by Grantor and Grantee; and (ii) this Agreement (and Grantee's rights hereunder) shall terminate if Grantee abandons the Project and fails to replace the Project with a mass transit system that utilizes a station or access point adjacent to the Property.

9. Additional Terms and Conditions. Whenever used herein, the singular number includes the plural, the plural the singular; and the use of any gender is applicable to all genders. All of the covenants herein contained are binding upon and inure to the benefit of the parties hereto, their personal representatives, successors and assigns. Any deed, lease assignment, conveyance, or contract made in violation of this Agreement is void. This Agreement may be modified or the Shared Parking Easement terminated only by the written agreement of the parties.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

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rk & Recorder, Larimer County, CO

GRANTOR: DILLON COMPANIES, INC.
a Kansas corporation

By: Russell J. Dispense
Russell J. Dispense

Title: Vice President

Date: 5-29-14

APPROVED OKG 05.23.14 LAW DEPT.

STATE OF COLORADO)
) ss
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 29th day of May, 2014 by Russell J. Dispense, as Vice President for Dillon Companies, Inc. A Kansas corporation Grantor.

Witness my hand and official seal.

My Commission expires: 9-27-17

MARILEE K. SCHWULST
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19934012937
MY COMMISSION EXPIRES SEPTEMBER 27, 2017

Marilee K. Schwulst
Notary Public

GRANTEE: THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation

By: _____
Darin A. Atteberry, City Manager

Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Deputy City Attorney

Item 6.

EPTION#: 20140048657, 08/28/2014 at 08:52:33 AM, 5 OF 11, Angela Myers,
rk & Recorder, Larimer County, CO

GRANTOR: DILLON COMPANIES, INC.
a Kansas corporation

By: _____

Title: _____

Date: _____

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014 by _____, as _____ for _____, Grantor.

Witness my hand and official seal.

My Commission expires: _____

_____
Notary Public

GRANTEE: THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation

By: _____
Darin A. Atteberry, City Manager

Date: 05/29/14

ATTEST:

_____
City Clerk

CITY OF FORT COLLINS SEAL COLORADO

APPROVED AS TO FORM:

_____
Deputy City Attorney

Item 6.

EPTION#: 20140048657, 08/28/2014 at 08:52:33 AM, 6 OF 11, Angela Myers,
rk & Recorder, Larimer County, CO

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 29th day of May, 2014, by Darin A. Atteberry as City Manager of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires: 7-16-17

Sara Gonzal
Notary Public

SARA GONZALES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014021847
MY COMMISSION EXPIRES JULY 16, 2017

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 29th day of May, 2014, Wanda Nelson as City Clerk of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires: 7-16-17

Sara Gonzal
Notary Public

SARA GONZALES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014021847
MY COMMISSION EXPIRES JULY 16, 2017

Item 6.

EPTION#: 20140048657, 08/28/2014 at 08:52:33 AM, 7 OF 11, Angela Myers,
rk & Recorder, Larimer County, CO

EXHIBIT A
Legal Description

TO
SHARED PARKING EASEMENT DEED
WITH TERMS AND CONDITIONS
BY AND BETWEEN
THE CITY OF FORT COLLINS, COLORADO
AND
DILLON COMPANIES, INC., A KANSAS CORPORATION

A portion of the following described property:

ALL OF TRACTS 1,2 AND 4, OF K-MART PLAZA, AND ALL OF TRACT 2 OF THE EXTENSION OF K-MART PLAZA, CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO:
EXCEPT THAT PORTION DESCRIBED IN BOOK 1605 AT PAGE 210, LARIMER COUNTY RECORDS;
AND EXCEPT THAT PORTION TAKEN AND CONDEMNED BY THE CITY OF FORT COLLINS, COLORADO, A MUNICIPAL CORPORATION, BY RULE AND ORDER RECORDED DECEMBER 27, 1997 AT RECEPTION NO. 96092189.

EPTION#: 20140048657, 08/28/2014 at 08:52:33 AM, 8 OF 11, Angela Myers,
rk & Recorder, Larimer County, CO

Exhibit B to Attachment 2
page 1 of 2

DESCRIPTION OF A SHARED PARKING AND ACCESS EASEMENT LOCATED ON THE DILLON COMPANIES, INC. A KANSAS CORPORATION PROPERTY TO BE DEDICATED TO THE CITY OF FORT COLLINS

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; BEING A PORTION OF TRACT 2 OF K-MART PLAZA, AS SHOWN ON THE PLAT THEREOF RECORDED IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 23, AND CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23 TO BEAR N89°26'43"W, SAID LINE BEING MONUMENTED ON BOTH ENDS BY A 5" ALUMINUM CAP, BASED UPON G.P.S. OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, N89°26'43"W, A DISTANCE OF 417.76 FEET;
THENCE N00°33'17"E, A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF DRAKE ROAD, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE, N89°26'43"W, A DISTANCE OF 285.05 FEET;
THENCE N01°42'27"E, A DISTANCE OF 29.21 FEET;
THENCE N88°53'38"W, A DISTANCE OF 7.26 FEET;
THENCE N01°23'15"E, A DISTANCE OF 179.39 FEET;
THENCE S88°36'45"E, A DISTANCE OF 37.60 FEET;
THENCE S01°23'15"W, A DISTANCE OF 82.87 FEET;
THENCE S89°13'33"E, A DISTANCE OF 252.81 FEET;
THENCE S00°33'17"W, A DISTANCE OF 118.27 FEET TO THE POINT OF BEGINNING.

CONTAINING 37,525 SQUARE FEET (0.861 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME AND IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.



JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522

S:\Engineering\Departments\Survey\Projects\Transportation Services\BRT\RIGHT OF WAY\DRAKE TO PROSPECT ROW WORK\LEGALS\ DILLON PARKING REV 1-29-2014.doc

Item 6.

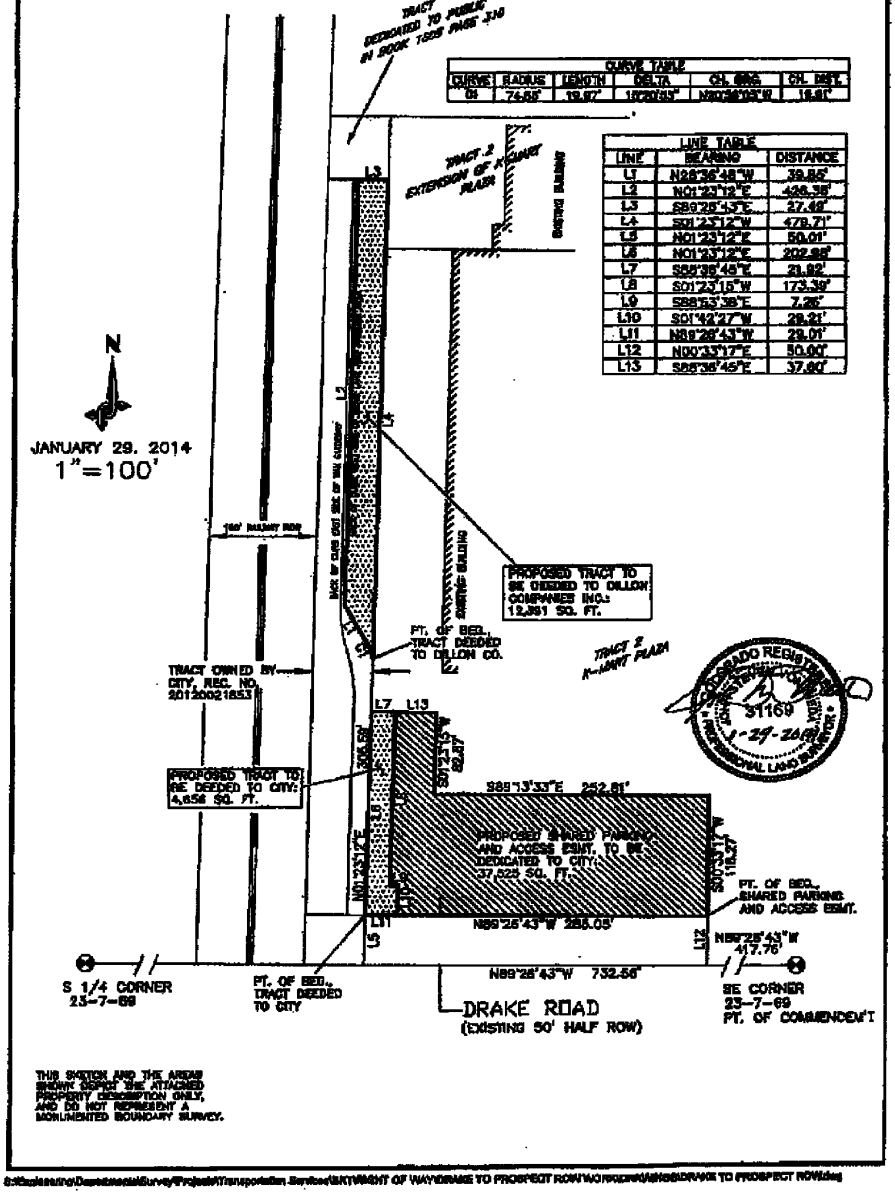
EPTION#: 20140048657, 08/28/2014 at 08:52:33 AM, 9 OF 11, Angela Myers,
rk & Recorder, Larimer County, CO

Exhibit B to Attachment 2
page 2 of 2

LOCATION SKETCH

DILLON COMPANIES INC.

DEEDED TRACTS AND PARKING EASEMENT



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rk & Recorder, Larimer County, CO

EXHIBIT C

Property Address: **FORT COLLINS CO 80525**

SETBACKS, EASEMENTS FOR UTILITIES, TRAFFIC AND PARKING, AS SHOWN IN PLAT OF K-MART PLAZA, K-MART PLAZA EXTENSION AND PLAT OF UNIVERSITY SHOPPING CENTER.

RIGHT-OF-WAY FOR EXISTING UNDERGROUND UTILITIES UNDER THE WEST 40 FEET OF SUBJECT PROPERTY AS RESERVED BY VACATION ORDINANCE RECORDED JULY 20, 1965 IN BOOK 1297 AT PAGE 131.

EASEMENTS, RESTRICTIONS, OBLIGATIONS AND CONDITIONS CONTAINED IN AGREEMENTS BETWEEN THE FIRST NATIONAL BANK OF FORT COLLINS, TRUSTEE, THE FORT COLLINS DEVELOPMENT CO., INC., AND MONTGOMERY WARD & CO., INCORPORATED, DATED DECEMBER 3, 1962, AND RECORDED JANUARY 8, 1963, IN BOOK 1193 AT PAGE 376, AS AMENDED AND MODIFIED BY INSTRUMENT DATED AUGUST 4, 1970, AND RECORDED FEBRUARY 5, 1971, IN BOOK 1452 AT PAGE 479 AND AGREEMENT RECORDED AUGUST 9, 1974 IN BOOK 1612 AT PAGE 822, AND MODIFICATION RECORDED JULY 26, 1976 IN BOOK 1712 AT PAGE 353, AND MODIFICATION RECORDED NOVEMBER 1, 1977 IN BOOK 1813 AT PAGE 489.

EXISTING LEASES AND TENANCIES, IF ANY.

MEMORANDUM OF LEASE DATED DECEMBER 11, 1970, BETWEEN NAREDEL PROPERTIES OF COLORADO, A LIMITED PARTNERSHIP, LESSOR, AND S.S. KRESGE COMPANY, A MICHIGAN CORPORATION, LESSEE, RECORDED FEBRUARY 24, 1971, IN BOOK 1453 AT PAGE 865. FIRST MODIFICATION OF MEMORANDUM OF LEASE DATED FEBRUARY 19, 1971 AND RECORDED MARCH 17, 1971, IN BOOK 1455 AT PAGE 732. SECOND MODIFICATION OF LEASE DATED SEPTEMBER 17, 1971 AND RECORDED NOVEMBER 9, 1971, IN BOOK 1482 AT PAGE 707 AND RECORDED APRIL 22, 1974, IN BOOK 1597 AT PAGE 764.

STREETS AS DEDICATED IN INSTRUMENT RECORDED JUNE 11, 1974 IN BOOK 1605 AT PAGE 310.

MEMORANDUM OF LEASE RECORDED SEPTEMBER 30, 1971 IN BOOK 1478 AT PAGE 200, AND ASSIGNED IN BOOK 1488 AT PAGE 155 AND BOOK 1490 AT PAGE 256.

EASEMENT GRANTED TO THE CITY OF FORT COLLINS, COLORADO, A MUNICIPAL CORPORATION FOR CONSTUCTING PUBLIC IMPROVEMENTS, BY INSTRUMENT RECORDED JULY 02, 1990, UNDER RECEPTION NO. 90028439.

RIGHT OF WAY EASEMENT AS GRANTED TO CITY OF FORT COLLINS IN INSTRUMENT RECORDED November 17, 1998, UNDER RECEPTION NO. 98100537.

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rk & Recorder, Larimer County, CO

MEMORANDUM OF LEASE RECORDED DECEMBER 14, 1998 AT RECEPTION NO. 98109551.

MEMORANDUM OF LEASE RECORDED APRIL 29, 1999 AT RECEPTION NO. 99036805.

LANDLORD'S CONSENT RECORDED APRIL 29, 1999 AT RECEPTION NO. 99036806.

MEMORANDUM OF LEASE RECORDED APRIL 29, 1999 AT RECEPTION NO. 99036809.

ENCROACHMENT OF FENCE AND ASPHALT ONTO ADJACENT PROPERTY OWNER TO THE WEST AS SET FORTH ON SURVEY NO. 9062.1 DATED JULY 27, 1999 BY JR ENGINEERING LTD.

TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT FOR POSSESSION AND USE RECORDED June 12, 2012 AT RECEPTION NO. 20120038626.

FAILURE TO COMPLY WITH THE TERMS, CONDITIONS AND PROVISIONS OF SHARED PARKING AND ACCESS EASEMENT DEED AND AGREEMENT RECORDED _____, 2014 AT RECEPTION NO. _____.

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Chad Crager, Broadband Executive Director
Cyril Vidergar, Legal

SUBJECT

Items Relating to Connexion Service in Larimer County.

EXECUTIVE SUMMARY

A. Resolution 2023-045 Authorizing the Execution of an Intergovernmental Agreement Between the City and Larimer County for Extension of Broadband Utility Services into Unincorporated Larimer County Beginning with Areas Near the Harmony Road and Taft Hill Road Intersection.

B. First Reading of Ordinance No. 073, 2023, Appropriating Unanticipated Revenue from Larimer County and Authorizing Transfers of Appropriations for the Design and Construction of Connexion into Areas Northwest and Northeast of the Harmony Road and Taft Hill Road Intersection and Related Art in Public Places.

The purpose of this item is to enter into an Intergovernmental Agreement (IGA) to enable the City and Larimer County to collaborate to provide Connexion broadband communication service within unincorporated Larimer County, including within the City's Growth Management Area. The initial project under the IGA to provide service to an area near the intersection of Harmony Road and Taft Hill Road will establish a cost- and revenue-sharing relationship through which the County will provide $3.58M to fund the design and construction of the expansion of Connexion service on behalf of the County. Upon appropriation of these funds and completion of this work, approximately 1,000 premises will be connected to Connexion service, and Connexion will thereafter share with the County a portion of the service revenue from these areas, subject to annual appropriation. Subsequent projects will be authorized through similar work orders executed pursuant to the IGA.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution and Ordinance on First Reading.

BACKGROUND / DISCUSSION

The City and Larimer County held respective statutory (SB 05-152) elections to enable each to build facilities and deliver local broadband communication services. In serving its residents, the County wishes to provide high-quality broadband communication services efficiently and cost-effectively through collaboration with adjacent municipalities. The County and Connexion worked together to prioritize unincorporated areas for initial service extension based on cost for service, adjacency to municipal broadband infrastructure, underserved areas, and low socio-economic status. The areas with the highest

initial rankings include over 1,000 premises in the City's Growth Management Area, northwest and northeast of the Harmony and Taft Hill Roads intersection. Because of its ranking, the initial project under the IGA will be for this area and the Work Order (#001) attached to the IGA as Exhibit A contains details related to the project. Subsequent projects to provide service in other areas of unincorporated Larimer County will be authorized through similar work orders pursuant to the IGA. The Resolution authorizes the City Manager to sign subsequent work orders, within certain parameters.

In furtherance of serving these residents, the County has agreed to fund all design and construction for Connexion to extend and construct broadband communication facilities and service in these areas under Work Order #001, in the amount provided below. These unanticipated revenues need to be appropriated for Connexion to engage in this collaborative project. In appropriating these funds, the City Code requires appropriate transfers to the City's Art in Public Places (APP) program.

Upon completion of construction and delivery of services for this initial project, subject to annual appropriation, Connexion will share with the County 25% of the service revenue from customer accounts in the constructed areas until the County receives an amount equal to its design and construction funding contributions.

In addition, the County and Connexion will continue to collaborate on identifying funding sources for future opportunities to deliver communication services to County residents under the purposes of the IGA.

CITY FINANCIAL IMPACTS

The following is a summary of the funding anticipated for the scope of work related to the fiber optic network design and installation associated with Work Order #001. Larimer County will provide all funding required for design and construction of this work:

Funds to be Appropriated with this Action	
Larimer Communications Service Funding	$3,580,000
Total Appropriations with this Action	**$3,580,000**

Funds are to be appropriated and expended in the Broadband Fund. Service revenue sharing amounts described in the IGA will be subject to and included in subsequent appropriations and annual budgets brought to Council for review and approval.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Though not through formal presentation, Connexion staff provided the Energy Board on multiple occasions in 2022 and 2023 with details on the regional communication service expansion planning described in the IGA. Staff also answered questions from the Board on these occasions, though did not present the IGA for review by the Board.

PUBLIC OUTREACH

Larimer County held meetings open to the public in determining priority of the areas funded by this IGA as well as approval of the IGA. Connexion will complete outreach to these neighborhoods for schedule, required property owner permissions, construction impacts, and marketing for available service.

ATTACHMENTS

1. Resolution for Consideration
2. Resolution Exhibit A
3. Ordinance for Consideration
4. Vicinity Map

RESOLUTION 2023-045
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND LARIMER COUNTY FOR EXTENSION OF BROADBAND UTILITY SERVICES INTO UNINCORPORATED LARIMER COUNTY BEGINNING WITH AREAS NEAR THE HARMONY ROAD AND TAFT HILL ROAD INTERSECTION

WHEREAS, the City of Fort Collins ("City") and Larimer County ("County") are, as a legal matter, each independently authorized to acquire and operate independent municipal broadband utility facilities and networks; and

WHEREAS, the City is a Colorado home-rule municipality that has undertaken to establish and operate a municipal broadband utility known as Fort Collins Connexion ("Connexion"), which it began operating in 2019, relying on regional partnerships with other governmental entities, broadband utility enterprises, and owners of fiber optic cable, capitalizing on regional municipal broadband opportunities; and

WHEREAS, in 2016, Larimer County voters approved a ballot measure authorizing the County to provide regional broadband services in unincorporated areas of the County, including entering into intergovernmental agreements to access municipal broadband utility networks; and

WHEREAS, in studying how to efficiently and cost-effectively serve residents with broadband communication services, the County sought to collaborate with adjacent municipalities to prioritize areas for initial service extension, based on cost for service, adjacency to municipal broadband facilities, underserved areas, and socio-economic status; and

WHEREAS, in light of the cost savings and potential future benefits of jointly supported communication services, the City and County desire to enter into the Intergovernmental Agreement for Connexion Communication Services Provision in Larimer County, in substantially the form attached hereto as Exhibit "A" (the "IGA") and incorporated by this reference; and

WHEREAS, in furtherance of the benefits available through shared expansion of broadband communication facilities with the City, the County has agreed to fund all design and construction for Connexion to extend broadband communication facilities and services to approximately one-thousand premises located in the vicinity of Harmony Road and Taft Hill Road in unincorporated Larimer County in exchange for receiving a portion of the service revenues collected in these areas, up to the amount of the County's design and construction funding, subject to annual appropriation by the City, all as described in the work order attached to the IGA; and

WHEREAS, subsequent projects to extend broadband communication facilities and services to areas within unincorporated Larimer County will be authorized through similar work orders subject to the terms of the IGA; and

WHEREAS, as Colorado governmental entities, the City and County are each authorized, pursuant to Colorado Revised Statutes Section 29-1-203, to cooperate or contract with one another to acquire or provide any government function, service, or facility lawfully authorized to each; and

WHEREAS, the City Council has determined that the IGA is in the best interests of the City, its citizens and ratepayers to accomplish the purposes set forth therein, and that the City Manager should be authorized to execute the IGA and related work orders between the City and the County.

NOW, THEREFORE, BE IT RESOLVED 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 above.

Section 2. That the City Council hereby approves the IGA and authorizes the City Manager, in consultation with the City Attorney and consistent with this Resolution, to finalize the IGA and its exhibits, and to execute it on behalf of the City, in substantially the form attached hereto as Exhibit "A," including Work Order #001 attached to the IGA.

Section 3. That in addition, the City Manager is authorized, during the term of the IGA and in consultation with the City Attorney, to approve and execute such amendments to the IGA and work orders in furtherance thereof as the City Manager determines to be reasonably necessary and appropriate to: (a) protect the City's interests or to effectuate the purposes of this Resolution; (b) provide a benefit to the City; (c) limit the City's repayment obligation to no greater than the obligation set forth in Work Order #001 to the IGA; and (d) otherwise limit the City's financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

INTERGOVERNMENTAL AGREEMENT FOR CONNEXION COMMUNICATION SERVICES PROVISION IN LARIMER COUNTY

THIS INTERGOVERNMENTAL AGREEMENT FOR CONNEXION COMMUNICATION SERVICES PROVISION IN LARIMER COUNTY ("Agreement") is made and entered into this ____ day of _____, 2023, by and between the City of Fort Collins ("Fort Collins" or "City") and Larimer County ("Larimer" or "County") (collectively the "Parties").

WHEREAS, voters of Fort Collins and Larimer County, respectively, approved legally required ballot measures at general elections, authorizing each entity to provide services contemplated in Colorado Revised Statues, Title 29, Article 27, including cable television service, telecommunications service, and advanced service (collectively, "Communications Services"); and

WHEREAS, Fort Collins is a home-rule municipality which has undertaken the financing, construction, and all further operations to establish a municipal utility for the provision of Communications Services, branded as "Fort Collins Connexion" ("Connexion"); and

WHEREAS, Larimer County is a statutory county that wishes to provide its residents access to high-quality Communications Services; and

WHEREAS, to provide reliable, competitive, and cost-effective Communications Services, the Parties each desire to collaborate with neighboring governments or communications enterprises, to leverage resources and efficiencies for the benefit of each party's residents and ratepayers; and

WHEREAS, Connexion has the network infrastructure necessary to provide robust Communications Services to Larimer County residents located both in enclaves within the City of Fort Collins and unincorporated areas outside the City; and

WHEREAS, Larimer County does not currently have the financial or institutional means to directly provide such Communications Services to its residents and would benefit from engaging Connexion to deliver such services; and

WHEREAS, to facilitate Connexion to develop the infrastructure necessary to provide Communications Services to Larimer County residents in the Fort Collins surrounding area, and other portions of unincorporated Larimer County as identified by the Parties under this Agreement; and

WHEREAS, as Colorado governmental entities, Fort Collins and Larimer County are authorized, pursuant to Colo. Const. art. XIV, § 18(2)(a) and C.R.S. § 29-1-203, to cooperate or contract with one another to acquire or provide any government function, service, or facility lawfully authorized to each.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. **Grant of Access**. Larimer County grants Fort Collins the authority to enter any and all parts of Larimer County to provide Communications Services. This access encompasses the right to provide Communications Services to Larimer County residents—natural persons, commercial enterprises, or otherwise - as well as install and maintain Communications Services facilities to serve such residents. By this grant of access, Larimer County does not purport to convey, nor does the City purport to receive, the right to enter private property that would require permission from private entities, including natural persons or corporate entities, for access to provide Communications Services. Larimer County will grant Connexion access to all County owned rights of way through its permitting process to deliver Communication Services to Larimer County residents. Access shall not occur prior to the appropriate and necessary permit(s) being issued. Access granted by Larimer County shall not impede or otherwise violate any other existing agreements with other parties and shall be subject to any existing rights or privileges of third-parties.

2. **Work Funded by Larimer County to be Performed by Connexion**. In its sole and absolute discretion, Connexion shall design and construct Communications Services facilities (the "Work") to serve as many Larimer County communities and properties as practicable with the Larimer Funding defined in each **Exhibit A-Work Order**, attached hereto and incorporated by reference. For each Larimer County community in which County-funded Work will be completed, a Work Order in the form illustrated in Exhibit A (an "**Exhibit A-Work Order")** must be completed in advance. The Work under each Exhibit A-Work Order shall be performed in a good and workmanlike manner and in accordance with applicable laws. The Scope of Work is further defined in each **Exhibit A-Work Order**. While Connexion shall retain authority to make decisions about construction and delivery of Communications Service, Larimer shall have authority to determine which neighborhoods and general areas of Larimer County will receive priority in the execution and performance of the Work as set forth in the applicable Work Orders.

3. **Service Commitment**. Unless this Agreement is terminated according to Section 12, and subject to continuous operation of such service during the period, Connexion shall

- provide continuous availability of broadband internet service to Connexion customers in any area of the County, where the necessary Work has been funded through a Work Order under this Agreement; and

- maintain such service for a 25-year period to be calculated from the date the first unincorporated property may be served, subject to such service interruptions as may reasonably arise or occur, and to such terms, conditions, customer class tiers, and rates as Connexion shall impose on such service in the normal course of its business and operations; and

- this obligation shall not remain in effect in the event Connexion ceases operations.

4. **Term**. This Agreement shall be effective from the date first written above and shall not terminate unless as provided in Section 12, including when a party defaults under the terms of the Agreement, the non-defaulting party provides notice of such default, and default is not cured within thirty (30) days of receipt of notice.

5. **Costs and Revenues**. Larimer shall provide each block of Larimer Funding associated with each respective **Exhibit A-Work Order** prior to initiation of the Work by Connexion under such Work Order. Thereafter, Connexion shall be solely responsible for all costs related to providing the Communications Services described in each **Exhibit A-Work Order**. Connexion shall be solely entitled to the revenues generated by the provision of the Communications Services, except as may be described in an **Exhibit A-Work Order**. In the event that the Parties determine that cost-sharing or revenue-sharing is justified for some part of the Communications Services provided under this Agreement, they shall address cost-sharing or revenue-sharing in the **Exhibit A-Work Orders**. Any such Work Orders shall be subject to the approval of the City Council or other City authority to the extent required under the City's Charter and Code or other applicable laws.

6. **Ownership and Management of Communications Services Facilities**. Connexion shall have and retain control and ownership of the facilities constructed as part of the Work under any Work Order or used by Connexion to provide Communications Services in Larimer County. Any issues that may arise in the construction and management of the physical fiber network shall remain entirely within Connexion's control and discretion and are outside the scope of this Agreement.

7. **Permitting and Franchise Requirements**. Connexion's installation and maintenance activities remain subject to all applicable permitting requirements, including Larimer County right-of-way rules. Any cable television service, as defined by C.R.S. § 29-27-102(2), that Connexion may offer to its customers shall be subject to any franchise requirement that may exist under Larimer County's laws.

8. **Records and Audits**. The City will maintain complete and accurate records of all charges incurred for the Work, in accordance with generally accepted accounting principles, for a period of thirty-six (36) months from the date of termination or completion of the Work. Larimer will have the right to inspect the City's records relating to the Work at reasonable times and upon reasonable notice and to retain copies thereof. Such records will include: (i) the date(s) Work was performed; (ii) a description of the Work performed; (iii) names of the individuals or subcontractors performing the Work; (iv) hours worked; (v) billing or compensation rate for the Work; and (vi) all other expenditures required for the completion of the Work. In the event of a disagreement about the use of the County Funds, the parties agree to work in good faith to resolve such disagreement.

9. **Procurement**. In procuring goods and services for the Work, the City shall comply with all applicable laws, rules, and regulations applicable to City procurements. Notwithstanding any other provision of this Agreement, the City shall retain full

discretion and authority in determining the terms of bidding related to the Work, the project delivery method, the project design, the letting of contracts for construction, construction oversight, and budget management.

10. Compliance with Law. The City shall be solely responsible for obtaining and maintaining any required permits, including Larimer County right-of-way permits, and for complying with all applicable laws and regulations relating to the Work, including but not limited to safety, construction, easements, and employment laws and regulations.

11. Insurance. Fort Collins shall obtain and keep in full force and effect general liability insurance or comparable self-insurance covering its actions and activities permitted under this Agreement in an amount at least equivalent to the City's liability under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. The City shall ensure that any subcontractor maintains all insurance customary for the completion of the Work as required by this Agreement.

12. Termination.

a. Termination for Convenience. Upon 30 days written notice, Larimer may terminate this Agreement in whole or in part if it determines, in its sole discretion that termination is in Larimer's best interests. After notice of termination has been given, the City and all subcontractors shall stop Work on the cancellation date specified in the notice.

b. Termination for Cause. Either party may terminate this Agreement in the event the other party is in default of its obligations under this Agreement and fails to substantially cure the default within thirty (30) days following written notice from the other party; provided, however, that if such default by nature cannot reasonably be cured with due diligence within thirty (30) days, then the defaulting party shall continue to diligently pursue a cure within sixty (60) days of receiving notice.

c. Effect of Termination. In the event of termination for convenience or cause, the City will be compensated for any Work performed prior to the date of termination that may exceed the Larimer Funding; however, the City will not be reimbursed for any anticipated work not otherwise in an **Exhibit A-Work Order** or future profit. Larimer's obligation to pay the City for all Work performed in reliance on an **Exhibit A-Work Order** shall survive termination of this Agreement. Despite any termination, Connexion shall retain the right to have and maintain its Communication Service Facilities that exist in Larimer County as of the date of termination and provide Communications Service to any property that is served or capable of being served (i.e., connected for service whether or not the property is taking service) as of the date of termination. In the event of termination for convenience or cause and after the City is reimbursed for all costs of the portion of the Work completed up to the date of termination, the City shall refund Larimer any prepaid portion of the funded amount that exceeds the cost of Work.

13. **Appropriations**. Neither Party shall have an obligation to continue this Agreement in any fiscal year in which no such appropriation is made and a termination in such a fiscal year shall not be considered default. Payment pursuant to any revenue sharing obligations set forth in an **Exhibit A-Work Order** shall similarly be subject to annual appropriation, except that any revenues collected or receivable up to the date of termination shall be deemed already appropriated and subject to any revenue sharing obligations set forth in an **Exhibit A-Work Order**.

14. **Assignment**. The Parties cannot assign the right or responsibilities of this Agreement without written agreement from the other party.

15. **Continuing Effect of Agreement**. All other terms and conditions of the Agreement shall remain in full force and effect according to the provisions thereof.

16. **Notices**. Written notices required under this Agreement and all other correspondence between the Parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested or as may be updated in each Exhibit A-Work Order:

If to Fort Collins: Chad Crager, PE
Fort Collins Connexion
222 Laporte Ave.
Fort Collins, CO 80521
ccrager@fcgov.com
970-212-2900

With copies to: Fort Collins City Attorney's Office
300 Laporte Ave.
PO Box 580
Fort Collins, CO 80521

If to Larimer County: Mark Pfaffinger, CIO
Larimer County, Information Technology
200 West Oak Street, Suite 4100
Fort Collins, CO 80521
pfaffima@co.larimer.co.us
970-498-5050

With copies to: Larimer County Attorney's Office
Broadband Matters
PO Box 1606
Fort Collins, CO 80521
970-498-7450

17. **Amendment**. Except as provided below, approval of amendments to this Agreement will be managed according to the respective approval policies of each Party. The Parties

expressly agree to allow mutual administrative approval of amendments at any time upon notice to the participating Parties listed and notice contacts in Section 16 above.

18. General Terms

a. Subject to Appropriation; No Multiple Year Obligation. It is understood and agreed by the Parties that any obligation of Fort Collins or Larimer County hereunder, whether direct or contingent, shall extend only to funds appropriated by the Parties' respective governing bodies and encumbered for the purpose of this Agreement. The Parties do not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years. Likewise, this Agreement shall not create a multiple-fiscal year direct or indirect debt or financial obligation of either Fort Collins or Larimer County.

b. Employee Status. All employees of each governmental entity who perform any services in relation to this Agreement shall remain the employees solely of the governmental entity employing them to perform such services and not of any other party hereto. No Party shall obtain, by virtue of paying or being reimbursed for or paying for costs under this Agreement, any direct control over the management, scheduling or facilities of the other Party.

c. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, by any Party, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

d. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the Parties.

e. No Third-Party Beneficiary. The Parties understand and expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than the signatory hereto receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

f. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

g. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

h. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

i. Legal Constraints. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States and imposed upon the Parties by their respective local laws, including, charters and local codes. Subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall either of the Parties exercise any power or take any action which shall be prohibited by applicable law.

j. Counterparts. This Agreement may be executed in separate counterparts, and the counterparts taken together shall constitute the whole of this Agreement.

k. Electronic Signature. This Agreement may be executed by electronic signature.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY OF FORT COLLINS

By: _____
City Manager

ATTEST:
By: _____
City Clerk

APPROVED AS TO FORM:
By: _____
Assistant City Attorney

LARIMER COUNTY

By: _____
County Commissioner

ATTEST:
By: _____
County Clerk

APPROVED AS TO FORM:
By: _____
Deputy County Attorney

EXHIBIT A

Work Order #_001___- dated_____, 2023

to Intergovernmental Agreement for Connexion Communication Services Provision in a Portion of Larimer County

A. **Scope of Services**. The scope of work related to the funded fiber optic network design and installation includes management, network engineering design, material procurement and construction of the fiber optic network. Portions of the fiber optic network covered by this work order are further defined below.

The subject fiber optic network installations are anticipated to primarily serve residential customers.

B. **Funding by Larimer County**. Larimer shall provide Connexion up to three million five hundred eighty thousand dollars ($3,580,000) in Communication Service Funding ("Larimer Funding") for the Work described in Exhibit B hereto. Larimer shall give the City notice to proceed and provide Connexion the Larimer Funding no later than 30 days before Connexion engages in any portion of the Work. Upon receipt of the Larimer Funding, Connexion shall undertake the Work in a timely manner. Eligible uses of Larimer Funding include, but are not limited to, all costs related to reasonable and necessary design, engineering, labor, licenses, outside plant and service drop installation, permitting, materials, supplies, equipment, equipment rentals, reimbursables, federal, state, and local income taxes, payroll, withholding and unemployment taxes, and other costs necessary in the performance of the Work. Connexion shall not treat Larimer Funding as revenue or profit for provision of Communications Service. In the event the Work has not been initiated within one year (three-hundred and sixty-five days) of Larimer providing the funding to Connexion, Larimer shall be permitted to require Connexion to return the Larimer Funding along with any interest that has accrued in connection with the funds, if the funds have been invested in an interest-bearing account.

C. **Optional Revenue Sharing Between Parties**. Provided that Connexion undertakes the Work and provides Communications Service to any property in Larimer County with the support of the Larimer Funding extended under this **Work Order #001**, Connexion will share a portion of recurring customer service revenue with Larimer in recognition of the Larimer Funding as follows:

1. **25% Revenue Share**. Beginning one year after Connexion initiates Communications Service to any property as a result of the Larimer Funding and continuing until Connexion has shared with Larimer a sum up to the total amount of the associated Larimer Funding, on an annual basis Connexion will distribute 25% of its Customer Revenue to Larimer. "Customer Revenue" shall mean the revenue Connexion receives from Communications Service subscribers for internet service packages, served as a direct result of Work completed with the Larimer Funding administered under this **Work Order #001**, as depicted in Exhibit B. "Customer Revenue" shall

not include any taxes, fees, or charges that Connexion must remit to any regulatory or governmental body (including the City of Fort Collins) on the customer's behalf or on Connexion's own behalf.

2. **Customer Revenue Sharing Only Applies to Properties in Unincorporated Larimer County**. The City's obligation to reimburse Larimer shall only apply to Communications Service provided to properties in unincorporated Larimer County as a direct result of and at the time of Larimer's funding provided under this Work Order. Furthermore, the City's reimbursement obligation under this Agreement shall in no way extend to revenues, facilities, goods or assets, that are and/or were funded by bond proceeds garnered by the City of Fort Collins and are subject to any bond covenant whatsoever (i.e., any revenues or assets associated with property within Fort Collins Light and Power's electric service territory).

3. **Larimer Responsible for Its Use of Funds**. Larimer is responsible for compliance with any laws, regulations or restrictions applicable to its use of funds to pay the City for the Work under this Work Order or funds reimbursed to Larimer by the City.

Service Area Map and Work Definition.

Map of Service Area

Work Definition

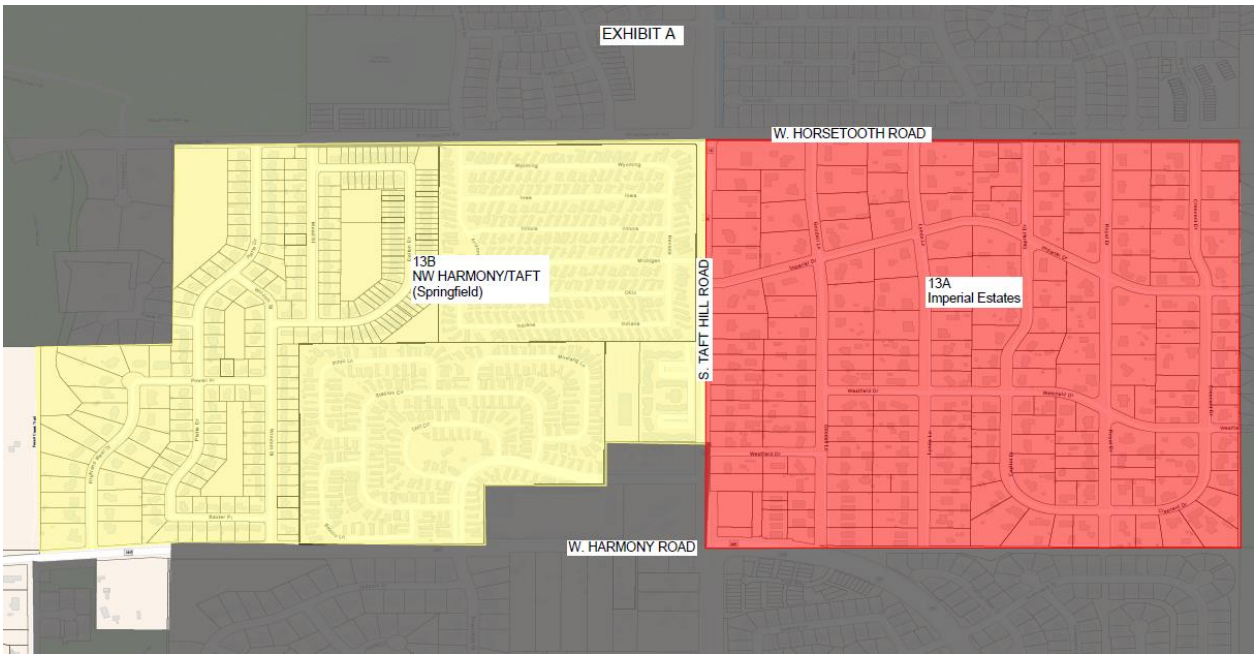


Exhibit B

Scope of Work

The scope of work related to this work order for fiber optic network design and installation services includes management, network engineering design, material procurement and construction of the fiber optic network. Each portion of the fiber optic network subject to Work Order is further defined below. Design plans representing service areas are provided in Exhibit A.

Imperial Estates – Area 13A

Installation of underground distribution conduit and fiber optic cable. Fiber optic service drop installation for approximately 203 premises within the service area. Service drops include installation of drop cable, splice enclosure, network interface device, wireless router and in-home network devices for customers acquiring service within this area in connection with the performance of the Work.

NW Harmony and Taft Hill Roads – Area 13B

Installation of underground distribution conduit and fiber optic cable. Fiber optic service drop installation for approximately 837 premises within the service area. Service drops include installation of drop cable, splice enclosure, network interface device, wireless router and in-home network devices for customers acquiring service within this area in connection with the performance of the Work.

ORDINANCE NO. 073, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED REVENUE FROM LARIMER COUNTY AND AUTHORIZING TRANSFERS OF APPROPRIATIONS FOR THE DESIGN AND CONSTRUCTION OF CONNEXION INTO AREAS NORTHWEST AND NORTHEAST OF THE HARMONY ROAD AND TAFT HILL ROAD INTERSECTION AND RELATED ART IN PUBLIC PLACES

WHEREAS, the City is a Colorado home-rule municipality that has established and operates a municipal broadband utility known as Fort Collins Connexion ("Connexion"); and

WHEREAS, in 2016, Larimer County voters authorized the County to provide regional broadband services in unincorporated areas of the County, including entering into intergovernmental agreements to access municipal broadband utility networks; and

WHEREAS, in light of the cost savings and potential future benefits of extending jointly supported regional broadband communication services, contemporaneously with this Ordinance, the City and County entered into an Intergovernmental Agreement for Connexion Communication Services Provision in Larimer County (the "IGA"); and

WHEREAS, in furtherance of benefits under the IGA, the County has agreed to fund design and construction for Connexion to extend broadband communication facilities and services, in exchange for a share of service revenue from customers in unincorporated areas up to the amount of the County's initial project contribution funding, subject to annual appropriation by the City; and

WHEREAS, consistent with the purposes of the IGA, the City and County prioritized areas for initial service extension, based on cost for service, adjacency to municipal broadband facilities, underserved areas, and socio-economic status, and identified an area including over 1,000 premises near the Harmony Road and Taft Hill Road intersection (the "Project"); and

WHEREAS, the County has committed Three Million Five Hundred Eighty Thousand dollars ($3,580,000) to be appropriated by the City in the Broadband Fund for the Project; and

WHEREAS, this Project involves construction estimated to cost more than $250,000 and, as such, City Code Section 23-304 requires one percent of these appropriations to be transferred to the Cultural Services and Facilities Fund for a contribution to the Art in Public Places program ("APP Program"); and

WHEREAS, contributions to the APP Program by each City utility for art projects is kept and spent in such utility's own fund, the utility contributes its share of the APP Program's costs for maintenance, administration, repair and display to the Cultural Services and Facilities Fund as provide in City Code Section 23-303(c); and

WHEREAS, in accordance with Article V, Section 10 of the City Charter, the appropriation for the Project from the Broadband Fund and the transfer of a portion of those unexpended and unencumbered appropriated funds to the APP Program as provided in City Code Section 23-304(c)

will be used for Broadband Fund purposes and improvements in connection with the Project that benefit public health, safety and welfare of the citizens of Fort Collins and serve the public purpose of strengthening regional governmental partnerships, broadband utility enterprises, and economically capitalizing on regional municipal broadband opportunities; and

WHEREAS, the amount to be contributed to the APP Program in this Ordinance will be $35,800; and

WHEREAS, Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Broadband Fund and will not cause the total amount appropriated in the Broadband Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year; and

WHEREAS, Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance; and

WHEREAS, the City Manager has recommended the transfer of $35,800 from the Broadband Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a capital project that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made but continue until the completion of the capital project; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Design and Construction of Connexion into Areas Northwest and Northeast of the Harmony and Taft Hill Intersection Project as an appropriation that shall not lapse until the completion of the project.

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 there is hereby appropriated from new revenue or other funds from the IGA in the Broadband Fund the sum of THREE MILLION FIVE HUNDRED EIGHTY THOUSAND DOLLARS ($3,580,000) to be expended in the Broadband Fund for the Design and Construction of Connexion into Areas Northwest and Northeast of the Harmony and Taft Hill Intersection Project.

Section 3. That the unexpended and unencumbered appropriated amount of TWENTY-SEVEN THOUSAND NINE HUNDRED TWENTY-FOUR DOLLARS ($27,924) in the Broadband Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 4. That the unexpended and unencumbered appropriated amount of SEVEN THOUSAND ONE HUNDRED SIXTY DOLLARS ($7,160) in the Broadband Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 5. That the unexpended and unencumbered appropriated amount of SEVEN HUNDRED SIXTEEN DOLLARS ($716) in the Broadband Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 6. That the appropriation herein from the Design and Construction of Connexion into Areas Northwest and Northeast of the Harmony and Taft Hill Intersection Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the project.

Introduced, considered favorably on first reading, and ordered published this 16th day of May, 2023, and to be presented for final passage on the 6th day of June, 2023.

Mayor

ATTEST:

City Clerk

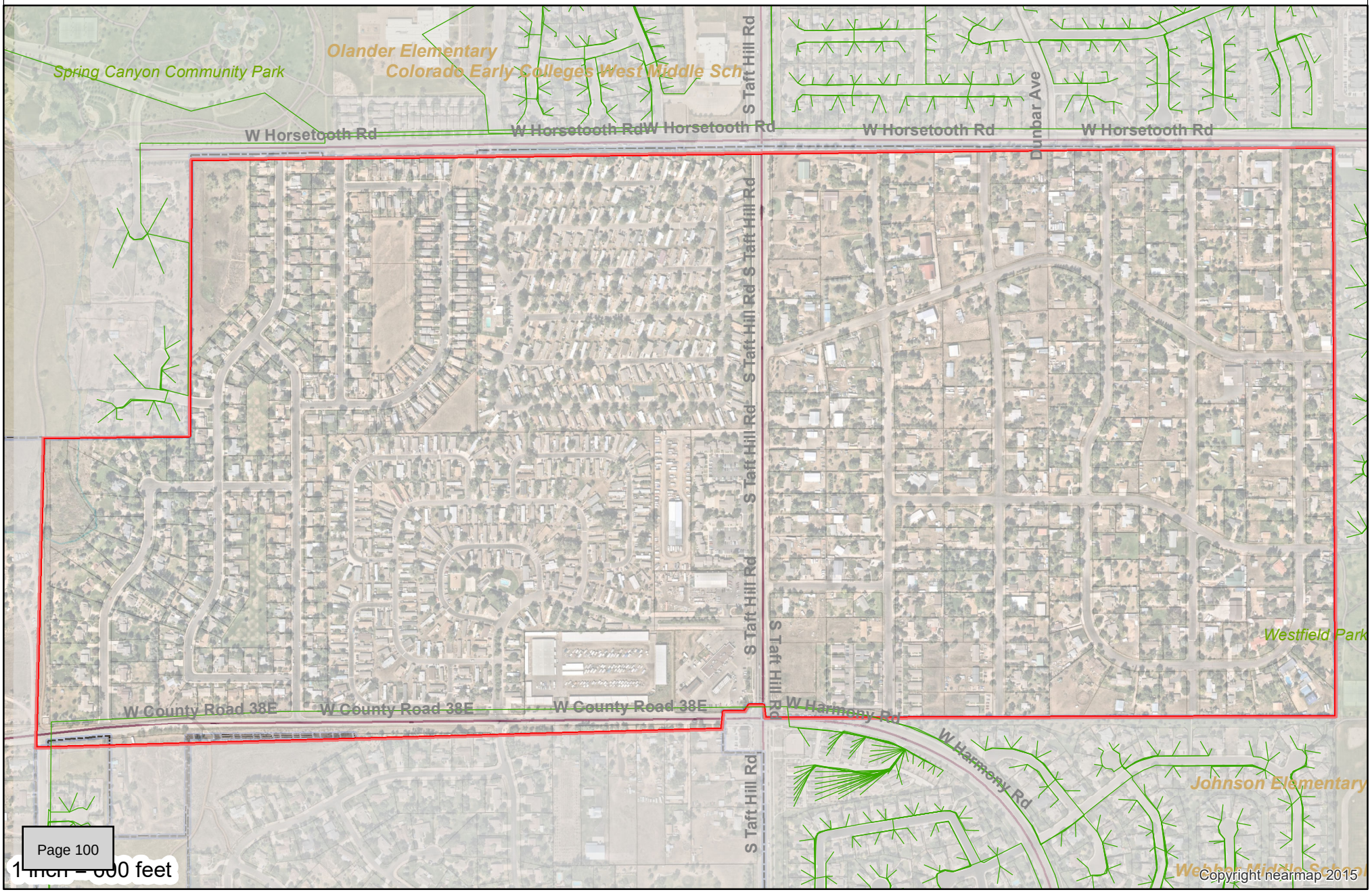
Passed and adopted on final reading this 6th day of June, 2023.

Mayor

ATTEST:

City Clerk

Larimer County Expansion - Harmony/Taft Hill



1 inch = 600 feet

Copyright nearmap 2015

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Anissa N. Hollingshead, City Clerk
Eric Potyondy, Legal

SUBJECT

Resolution 2023-046 Appointing Two Board Members to the Boxelder Basin Regional Stormwater Authority Board of Directors Being One Selected by the City and One Jointly Selected by the City and Larimer County.

EXECUTIVE SUMMARY

The purpose of this item is to consider making two appointments to the Board of Directors of the Boxelder Basin Regional Stormwater Authority.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

Pursuant to the intergovernmental agreement establishing the Boxelder Basin Regional Stormwater Authority (the "Authority), the Authority has a five-person Board of Directors. The City, Larimer County, and Town of Wellington are each authorized to appoint one Director. The other two Director positions are considered unaffiliated Directors, one of which is jointly appointed by the City and County, and one of which is jointly appointed by the Town of Wellington and the County. No more than one unaffiliated Director can be employed by or an elected official of the City, Larimer County, or the Town of Wellington. One unaffiliated Director position jointly appointed by Larimer County and the Town of Wellington is held by Richard Seaworth through April 2024, who is not an employee or elected official of the City, Larimer County, or the Town of Wellington.

This Resolution appoints Mayor Arndt as the City-appointed Director and Jennifer Dial, the City's Water Resources Manager, as the Director jointly appointed by the City and Larimer County.

CITY FINANCIAL IMPACTS

None.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution for Consideration

RESOLUTION 2023-046
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPOINTING TWO BOARD MEMBERS TO THE BOXELDER BASIN REGIONAL STORMWATER AUTHORITY BOARD OF DIRECTORS BEING ONE SELECTED BY THE CITY AND ONE JOINTLY SELECTED BY THE CITY AND LARIMER COUNTY

WHEREAS, the City of Fort Collins, Colorado ("City"), the Board of Commissioners of Larimer County, Colorado ("County"), and the Town of Wellington, Colorado ("Town") are parties to that certain Intergovernmental Agreement for Stormwater Cooperation and Management, dated August 20, 2008, and First Amendment to Intergovernmental Agreement for Stormwater Cooperation and Management, dated June 16, 2014, as amended (collectively, "Agreement") for the purpose of creating the Boxelder Basin Regional Stormwater Authority ("Authority"); and

WHEREAS, the Agreement states that the Authority shall be governed by a Board of Directors ("Board") consisting of five Directors, one each appointed by the City, the Town, and the County, and two unaffiliated Directors, representing the public at large; and

WHEREAS, the Agreement states that one of the unaffiliated Directors shall be appointed by mutual agreement of the City and the County, with the other unaffiliated Director appointed by agreement of the Town and the County upon mutual agreement and that no more than one of such unaffiliated members shall be employed by or an elected official of the City, County, or Town; and

WHEREAS, the Directors serve for staggered terms of three years; and

WHEREAS, Richard Seaworth, who is not employed by or an elected official of the City, County, or Town, is the unaffiliated Director jointly appointed by the Town and the County; and

WHEREAS, on July 7, 2015, the Fort Collins City Council ("City Council") adopted Resolution 2015-066, adopting Council retreat priorities for 2015-2017, one of which called for appointment of members of the Board by Council rather than by City staff; and

WHEREAS, on April 5, 2016, City Council adopted Resolution 2016-034, appointing then Mayor Pro Tem Gerry Horak to the Board as the City-appointed Director, and on April 23, 2019, City Council adopted Resolution 2019-054, re-appointing Mr. Horak as the City-appointed Director until such time as the City Council acts to modify his appointment; and

WHEREAS, on May 5, 2020, City Council adopted Resolution 2020-044, appointing former Mayor Pro Tem Gerry Horak as the unaffiliated City-County-jointly-appointed Director and Theresa Connor, Deputy Director of Fort Collins Utilities, as the City-appointed Director; and

WHEREAS, former Mayor Pro Tem Gerry Horak resigned as the member of the Board in 2021; and

WHEREAS; after solicitation of applications for the City-County-jointly-appointed-Director position, one application was received and that applicant, Theresa Connor, was approved by the Board of County Commissioners to fill the jointly-appointed Board seat at its September 14, 2021, meeting; and

WHEREAS, although a selection committee was previously appointed to recommend an appointee to be the City-County-jointly-appointed Director, since there was only one application for the joint position from an existing Director, staff did not convene that committee to review the single application, and the process moved forward without selection committee action; and

WHEREAS, on September 21, 2021, City Council adopted Resolution 2021-089, appointing Mayor Jeni Arndt as the City-appointed Director, which had been vacated by Theresa Connor as a result of her appointment to the joint City-County-jointly-appointed Director; and

WHEREAS, Theresa Connor is no longer employed by or affiliated with the City; and

WHEREAS, considering these developments, City Council wishes to appoint Jennifer Dial as the City-County-jointly-appointed Director, and further wishes to reappoint Mayor Jeni Arndt as the City-appointed Director.

NOW, THEREFORE, BE IT RESOLVED 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 Jennifer Dial is hereby appointed, effective immediately, as the Director on the Authority's Board jointly appointed by the City and the County, to continue until April 1, 2026, or until such time as the City and the County jointly approve a replacement appointee.

Section 3. That Mayor Jeni Arndt is hereby reappointed, effective immediately, to serve as the Director on the Authority's Board appointed by the City, to continue until April 1, 2026, or until such time as the City Council approves a replacement appointee.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of May, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Kirk Longstein, Senior Environmental Planner
Clay Frickey, Interim Planning Manager
Paul Sizemore, Director, Community Development and Neighborhood Services
Brad Yatabe, Legal

SUBJECT

Second Reading of Ordinance No. 071, 2023, Amending the Land Use Code to Include Guidelines and Regulations for the Administration of Designated Areas and Activities of State Interest.

EXECUTIVE SUMMARY

This Ordinance, adopted on First Reading on May 2, 2023, by a vote of 6-1 (Nay: Peel), amends the Fort Collins Land Use Code to include 1041 regulations. The 1041 powers give local governments the ability to regulate particular development projects occurring within their jurisdiction, even when the project has broader impacts. The 1041 regulations would allow for reviewing and permitting of two designated areas and activities of statewide interest: (1) major domestic water, sewage treatment; and (2) highway projects. Staff has amended the Ordinance to reflect the motion adopted by Council on first reading on May 2, 2023.

STAFF RECOMMENDATION

- Planning staff recommend adoption of the Ordinance with amendments adopted on first reading.
- Planning staff also recommends adoption of two additional amendments for Council consideration during second reading.

BACKGROUND / DISCUSSION

The term “1041” refers to the number of the bill, House Bill 74-1041, that created the 1041 powers in 1974, and the statutes regarding 1041 powers are also referred to as the Areas and Activities of State Interest Act (“AASIA”). The statute authorizes local governments to regulate specified activities and areas, and the proposed regulations address three types of activities listed in the statute. 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 from 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: (1) is 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) incentivizes project siting and design that avoid impacts to critical natural habitat, cultural resources, and disproportionately impacted communities.

City Council Amendments Adopted at the May 2, 2023, Hearing

Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 071-2023 Amending the Land Use Code to Include Regulations for Areas and Activities of State Interest, including staff recommendations of 2a and 2 b.

> ***Staff Recommendation 2a) Add conceptual submittal document that summarizes the potential for a significant impact.***
>
> ***Staff Recommendation 2b) 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.***

City Attorney Daggett ran through the changes associated with the scope changes to the ordinance relating to Decision Point 1.

Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to amend the motion on the floor to amend the ordinance to include the changes related to Decision Point 1 read into the record by the City Attorney.

> ***The motion to amend the motion on the floor carried 7-0.***
>
> ***The motion as amended carried 6-1.***
>
> ***Ayes: Councilmember Canonico, Pignataro, Gutowsky, Ohlson, Mayor Pro Tem Francis and Mayor Arndt.***
> ***Nays: Councilmember Peel.***

Below is a summary of the staff recommendations adopted on first reading.

- Staff recommendations Council adopted on first reading and are already reflected in ordinance:
  - Amend the Code to remove pipe-size diameter and exclude projects within existing public Right of Way
  - Amend the Code to add a definition that redefines the Applicability of Standards determination FONAI to a FONSI, Impact, Cumulative impacts, Significant
- Staff recommendations Council adopted on first reading and are shown in the attached mark up:
  - Conforming changes related to the updates to the definitions and applicability of standards determination.
  - Add conceptual submittal document that summarizes the potential for a significant impact.
  - 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.

The amendments that Council adopted on first reading, including the changes that staff was directed to make for second reading, are incorporated in the version of Ordinance No. 071, 2023, provided for

Council's consideration at second reading. These changes that staff were directed to make for second reading are shown in the attached mark-up version of the Ordinance.

Second Reading Amendments – Two Additional Amendments for Council Consideration During Second Reading

- Two Additional Amendments Recommended by staff for Council consideration. Sample motions are attached.
  1) Delete reference to Council Pre-Application Hearing Regarding Areas and Activities of State Interest (See attachment 3 for sample motion and details regarding the amendment.)

Mitigation guarantee if FONSI issued (See attachment 4 for sample motion and details regarding the amendment.)

CITY FINANCIAL IMPACTS

Decision Point 5 - Permit Administration

As directed by Council, staff plans to bring forward a supplemental appropriation on May 30, 2023, to support the administration of 1041 permit applications using a third-party contractor.

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, FONSI, and full permit review. All costs assessed by the contractor will pass through to the applicant. Based on an RFI issued in the fall of 2022, staff estimate $30,000 dollars for each third-party application review, depending on complexity of the project.

Based on a preliminary staffing analysis for ongoing management of the permitting program that utilizes a third-party contractor, a development review permit fee will be assessed in addition to the third-party review fees. 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. Staff estimate these fees will align closely with the existing PDP development review fee.

In addition to an RFP for on-call permit review services, staff is requesting $80,000 in supplemental appropriations to generate customer tools which support GIS analysis, and project management services that will establish a clear expectation for the applicant and the third-party consultant to meet the code requirements.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

During the January 25, 2023, meeting, the Planning and Zoning Commission shared that they believe 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.

Staff addressed these comments through the 5 decision points presented to Council on May 2, 2023.

PUBLIC OUTREACH

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 provided during first reading, provided feedback on the five decision points and staff recommendations.

ATTACHMENTS

1. Ordinance for Consideration
2. Changes Adopted On First Reading and Related Second Reading Changes (with redline)
3. Amendment #1: No Pre-Application Council Review
4. Amendment #2: Require Guarantee for Mitigation if FONSI Issued
5. Presentation

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 19, 2021, City Council adopted Ordinance No. 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 No. 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 No. 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 No. 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 No. 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 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, 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:



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 Commission, 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 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 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 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 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, 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 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 Commission in the case of Planning and Zoning 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, Planning and Zoning 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 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 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 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 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 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 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 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 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 no significant impact is issued pursuant to Section 6.6.5.

. . .

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 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), (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 Commission or City Council as applicable pursuant to above Subsections (A), (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 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

. . .

(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.

(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***.

	Minimum Notice Radius	***Sign Size***
. . .	. . .	. . .
Area or activity of state interest	1,000 feet in all directions of the location of a proposed development plan as determined by the Director, this distance shall apply to mailed notice for FONSI comment periods, neighborhood meetings, appeals of Director FONSI decisions, Planning and Zoning Commission permit recommendations, and City Council permit hearings	12 square feet, however, the Director may require an increased number of signs depending upon the size and configuration of the proposed development plan

(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 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 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 Commission within sixty (60) calendar days of a notice of appeal being deemed complete unless the Planning and Zoning Commission adopts a motion granting an extension of such time period.

(4) *Notice*. Once a hearing date before the Planning and Zoning 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 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, and City staff shall prepare a staff report for the Planning and Zoning 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 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 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 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 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 Commission decision shall constitute a final decision appealable to City Council pursuant to Section 2.2.12(A).

(D) *Appeal of FONSI Determination*. The Director's determination pursuant to Section 6.5.5 that a proposed development plan would have no significant impact and would not require a permit pursuant to Article 6, or that a proposed development plan would have a significant 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 have a significant 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 not have a significant 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 FONSI 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 significant impact and is not required to obtain a permit, the procedure set forth in Section 2.2.7 shall be modified to provide the FONSI 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 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 no significant impact ("FONSI") 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 FONSI 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): Pursuant to Section 6.6.6, a neighborhood meeting is required before the Director may determine that a permit application is complete pursuant to Section 6.6.8 and no sooner than fifteen

(15) days after the date the Director issues a FONSI determination. The ten (10) day period after the neighborhood meeting before an application may be submitted shall not apply.

(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 6.6.10, and combined applications for a permit to conduct multiple activities or develop in multiple areas of state interest is addressed in Section 6.6.11.

(4) ***Step 4*** (Review of Application): Applicable except that Section 6.6.8 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 6.6.12.

(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 FONSI 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 FONSI 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 FONSI determinations, Section 2.2.12(D) regarding appeals of Director FONSI decisions, and Section

6.6.12 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 6.6.15.

(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 6.6.15 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, 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

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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
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6.12.5 Transfer of Permits
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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 FONSI 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 FONSI 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.

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.

Finding of no significant impact (or FONSI) shall mean the decision by the Director as to whether a potential impact is not significant based on the scale and context of the proposed development plan as well as the magnitude, duration or likelihood of an impact occurring.

High priority habitat shall mean habitat areas identified by City Natural Areas or Colorado Parks and Wildlife where measures to avoid, minimize, and mitigate 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 shall mean the direct or indirect negative effect or consequence resulting from development that may or may not be avoidable or fully mitigated.

Impact area shall mean the geographic areas within the City, including the development site, in which any significant 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) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan; or

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

Major 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) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan; or

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

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

Major 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 public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less; or

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less.

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 public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less;

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less; or

(6) Any sewage system facility that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

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 significant 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 a significant 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.

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

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 FONSI 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 FONSI 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 FONSI.

(C) The Planning and Zoning Commission shall be the decision maker regarding appeals of Director decisions to issue or not issue a FONSI 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 FONSI. 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 FONSI Public Comment Period
6.6.5 Determination of Applicability of Regulations- FONSI
6.6.6 Neighborhood Meeting
6.6.7 Application Submission Requirements
6.6.8 Determination of Completeness
6.6.9 Referral Agencies
6.6.10 Simultaneous Processing of Associated Development Applications
6.6.11 Combined Application for Multiple Activities or Development in More than One Area of State Interest.
6.6.12 Permit Decision Making Procedures
6.6.13 Conduct of Permit Hearings
6.6.14 Approval or Denial of Permit Application
6.6.15 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 significant 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) A written summary as to whether the proposed development plan has the potential for a significant impact or not. The review of significance must include specifics related to the scale, magnitude, duration, or likelihood of the impact occurring.

(7) 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.

(8) Any conceptual mitigation plans for the preferred location of the proposed development plan;

(9) 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 FONSI 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 6.6.8; 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

(10) Any additional information requested by the Director as necessary to make a FONSI determination pursuant to Section 6.6.5.

6.6.4 FONSI Public Comment Period

(A) Upon the Director deeming the application for a pre-application area or activity review as complete, written notice shall be mailed pursuant to (B). The Director shall not issue a FONSI determination pursuant to Section 6.6.5 for at least fourteen (14) days from the date of mailing to allow for any person to submit written comments for the Director's consideration.

(B) At the applicant's cost, notifications for the Director's pending FONSI determination 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 - FONSI

The Director shall determine the applicability of these Regulations based upon the pre-application area or activity review meeting described in Section 6.6.3, information provided as part of the application or third-party consultants retained by the Director, and any written public comments.

(A) The Director shall make a finding related to whether the proposed development plan will result in significant impacts. In order for the Director to determine that a proposed development plan will not result in significant impacts and to issue a FONSI, 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 significant 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 FONSI 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 significantly impact a natural feature as defined by the Land Use Code;

(6) Has the potential to significantly impact natural habitat corridors identified by the City's Natural Area Department;

(7) Has potential to significantly impact historic or cultural resources within a two hundred (200) foot outer boundary of the proposed development plan; or

(8) Has potential to significantly impact disproportionally impacted communities.

(B) If the Director issues a FONSI, the applicant does not need to submit a permit application under these Regulations. However, issuance of a FONSI 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 FONSI 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 significant impacts, the Director may rescind the FONSI 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 no significant impacts, or FONSI, 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 FONSI 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 6.6.7, 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 FONSI and not require a permit or to not issue a FONSI and require a permit shall be in writing and describe in detail the reasons for the determination. Subject to the fourteen (14) day comment period described in Section 6.6.4, the Director shall make this determination within twenty-eight (28) days after the date the preapplication review has occurred or any requested additional information or third-party consultation is received, whichever is later.

(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 FONSI 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 6.6.8 and 6.6.12 and such time period shall begin from the date the appeal is decided as previously described.

6.6.6 Neighborhood Meeting

(A) Before the Director may determine that a permit application is complete pursuant to Section 6.6.8, a neighborhood meeting is required pursuant to Land Use Code Section 2.2.2. The neighborhood meeting may be held no sooner than fifteen (15) days after the date of the Director FONSI determination pursuant to Land Use Code Section 6.6.5 that a permit is required pursuant to these Regulations. Should a FONSI determination requiring a permit be appealed, the neighborhood meeting requirement will be paused until the appeal has been decided. Should a FONSI determination that no permit is required be reversed on appeal, a neighborhood meeting is required.

(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.

6.6.7 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.

6.6.8 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. The applicant may submit an application only after at least fifteen (15) days have passed since the FONSI 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.

6.6.9 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.

6.6.10 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.

6.6.11 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.

6.6.12 Permit Decision Making Procedures

When an application has been determined complete by the Director pursuant to Section 6.6.8 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.

6.6.13 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.

6.6.14 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 6.6.15 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 6.6.15 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 6.6.15 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 6.6.15 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.

6.6.15 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. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.

If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.15 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 6.6.15 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 have a significant 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 a significant 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 a significant 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 a significant 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 a significant 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 a significant 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 a significant 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 a significant 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 a significant 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 a significant impact on natural habitats and features as defined in Land Use Code Section 3.4.1.

(O) The development plan will not have a significant impact on historic or cultural resources as defined in Section 6.1.9 of these Regulations.

(P) The development plan will not have a significant impact on significant trees as defined in Land Use Code Section 3.2.1.

(Q) The development plan will not have a significant 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 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 significant 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 significant 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 significant 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 significant 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 significant 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 significant 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. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.15 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 6.6.15 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. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.15 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 6.6.15 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 a significant 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 FONSI 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 FONSI 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

CHANGES ADOPTED ON FIRST READING OF ORDINANCE 071, 2023, AND RELATED STAFF CHANGES FOR SECOND READING

This document contains the following information and provides an explanation of the marked version of Ordinance 071, 2023, attached to the Agenda Item Summary:

A. Changes made and adopted on first reading of Ordinance 071, 2023.

B. Changes adopted on first reading of Ordinance 071, 2023, and completed by City staff after first reading.

Note that the version of Ordinance 071, 2023, being presented at Council on second reading includes amendments that Council adopted to the Ordinance at first reading, such as to the definitions, and also includes subsequent changes made by City staff to implement the adopted amendments. The **subsequent changes** are marked in the separate version of Ordinance 071, 2023, also attached to the Agenda Item Summary. The marked version of the Ordinance is slightly longer than the Ordinance being provided to Council for consideration at second reading.

A. The following changes were made and adopted at first reading and are incorporated in the version of Ordinance 071, 2023, being presented to Council on second reading:

- Changes were made to the following definitions in Section 6.1.9:
  - major new sewage system
  - major new domestic water system
  - major extension of an existing domestic water treatment system
  - major extension of an existing sewage treatment system

- The following new definitions were added to Section 6.1.9:
  - public right-of-way
  - finding of no significant impact (or FONSI)
  - impact

- The following definitions were deleted from Section 6.1.9:
  - adverse impact
  - FONAI

- The following language was added to Section 6.7.1, 6.8.3, and 6.9.3:
  "The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact."

B. Council adopted the following changes at first reading and directed staff to make such changes. The changes are incorporated in the version of Ordinance 071, 2023, presented to Council on second reading and are marked in the separate version of Ordinance 071, 2023, so it is clear what was changed.

- Staff was directed to make conforming changes throughout the Ordinance to align with the change from FONAI to FONSI and the change from adverse impact to significant impact.

  These changes are in red on pages 11, 16, 19, 20, 21, 22, 23, 28, 31, 34, 36, 37, 41, 42, 44, 45, 46, 47, 49, 53, 54, 55, 56, 57, 58, 59, 62, 66

- Staff was directed to make recommended change 2a. of the staff Powerpoint presentation: 2a. Add conceptual submittal document that summarizes the potential for a significant impact.

  This change is highlighted in gray on p. 45.

- Staff was directed to make recommended change 2a. of the staff Powerpoint presentation: 2b. Move neighborhood meeting requirements to after review of the applicability of standards (i.e., FONAI determination), and extend comment period during the preapplication activity review.

  These changes are in blue on pages 16, 22, 23, 24, 28, 42, 43, 45, 47, 48, 49, 50, 51, 52, 53, 59, 60.

Attachment:

Marked-Up Version of Ordinance 071, 2023, Showing Staff Changes to Implement Council Adopted Amendments

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 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, 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:



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 Commission, 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 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 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 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 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, 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 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 Commission in the case of Planning and Zoning 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, Planning and Zoning 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 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 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 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 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 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 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 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 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~~no significant impact is issued pursuant to Section 6.6.5.

. . .

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 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), (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 Commission or City Council as applicable pursuant to above Subsections (A), (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 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

. . .

(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.

(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***.

	Minimum Notice Radius	***Sign Size***
. . .	. . .	. . .
Area or activity of state interest	1,000 feet in all directions of the location of a proposed development plan as determined by the Director, this distance shall apply to mailed notice for FONSI comment periods,	12 square feet, however, the Director may require an increased number of signs depending upon

	neighborhood meetings, appeals of Director ~~FONAI~~FONSI decisions, Planning and Zoning Commission permit recommendations, and City Council permit hearings	the size and configuration of the proposed development plan

(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 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 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 Commission within sixty (60) calendar days of a notice of appeal being deemed complete unless the Planning and Zoning Commission adopts a motion granting an extension of such time period.

(4) *Notice*. Once a hearing date before the Planning and Zoning 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 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, and City staff shall prepare a staff report for the Planning and Zoning 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 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 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 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 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 Commission decision shall constitute a final decision appealable to City Council pursuant to Section 2.2.12(A).

(D) *Appeal of ~~FONAI~~FONSI Determination*. The Director's determination pursuant to Section 6.5.5 that a proposed development plan would have ~~negligible adverse~~no significant impact and would not require a permit pursuant to Article 6, or that a proposed development plan would ~~cause more than a negligible adverse~~have a significant 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~~have a significant 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 adverse negligible~~not have a significant 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~~FONSI 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~~significant 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~~FONSI 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 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~~ no significant impact ("~~FONAI~~FONSI") 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~~FONSI 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.~~Pursuant to Section 6.6.6, a neighborhood meeting is required before the Director may determine that a permit application is complete pursuant to Section 6.6.8 and no sooner than fifteen (15) days after the date the Director issues a FONSI determination. The ten (10) day period after the neighborhood meeting before an application may be submitted shall not apply.

(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 6.6.10~~9~~, and combined applications for a permit to conduct multiple activities or develop in multiple areas of state interest is addressed in Section 6.6.11~~0~~.

(4) ***Step 4*** (Review of Application): Applicable except that Section 6.6.8~~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 6.6.12~~1~~.

(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~~FONSI 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~~FONSI 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~~FONSI determinations, Section 2.2.12(D) regarding appeals of Director ~~FONAI~~FONSI decisions, and Section 6.6.12~~1~~ 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 6.6.154.

(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 6.6.154 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, 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~~FONSI Public Comment Period
6.6.5 Determination of Applicability of Regulations- ~~FONAI~~FONSI
6.6.6 Neighborhood Meeting
6.6.7~~6~~ Application Submission Requirements
6.6.8~~7~~ Determination of Completeness
6.6.9~~8~~ Referral Agencies
6.6.10~~9~~ Simultaneous Processing of Associated Development Applications
6.6.11~~0~~ Combined Application for Multiple Activities or Development in More than One Area of State Interest.
6.6.12~~1~~ Permit Decision Making Procedures
6.6.13~~2~~ Conduct of Permit Hearings
6.6.14~~3~~ Approval or Denial of Permit Application
6.6.15~~4~~ 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~~FONSI 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~~FONSI 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.

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.

Finding of no significant impact (or FONSI) shall mean the decision by the Director as to whether a potential impact is not significant based on the scale and context of the proposed development plan as well as the magnitude, duration or likelihood of an impact occurring.

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 shall mean the direct or indirect negative effect or consequence resulting from development that may or may not be avoidable or fully mitigated.

Impact area shall mean the geographic areas within the City, including the development site, in which any ~~adverse~~significant 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) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan; or

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

Major 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) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan; or

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

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

Major 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 public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less; or

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less.

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 public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less;

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less; or

(6) Any sewage system facility that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

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~~significant 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 a~~n adverse~~significant 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.

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

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~~FONSI 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~~FONSI 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~~FONSI.

(C) The Planning and Zoning Commission shall be the decision maker regarding appeals of Director decisions to issue or not issue a ~~FONAI~~FONSI 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~~FONSI. 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~~FONSI Public Comment Period
6.6.5 Determination of Applicability of Regulations- ~~FONAI~~FONSI
6.6.6 Neighborhood Meeting
6.6.7~~6~~ Application Submission Requirements
6.6.8~~7~~ Determination of Completeness
6.6.9~~8~~ Referral Agencies
6.6.10~~9~~ Simultaneous Processing of Associated Development Applications
6.6.11~~0~~ Combined Application for Multiple Activities or Development in More than One Area of State Interest.
6.6.12~~1~~ Permit Decision Making Procedures
6.6.13~~2~~ Conduct of Permit Hearings
6.6.14~~3~~ Approval or Denial of Permit Application
6.6.15~~4~~ 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~~significant 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) A written summary as to whether the proposed development plan has the potential for a significant impact or not. The review of significance must include specifics related to the scale, magnitude, duration, or likelihood of the impact occurring.

(7) ~~(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.

(8) ~~(7)~~ Any conceptual mitigation plans for the preferred location of the proposed development plan;

(9) ~~(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~~FONSI 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 6.6.8~~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

(10) ~~(9)~~ Any additional information requested by the Director as necessary to make a ~~FONAI~~FONSI determination pursuant to Section 6.6.5.

6.6.4 ~~Neighborhood meeting~~FONSI Public Comment Period

(A) Upon the Director deeming the application for a pre-application area or activity review as complete, written notice shall be mailed pursuant to (B). The Director shall not issue a FONSI determination pursuant to Section 6.6.5 for at least fourteen (14) days from the date of mailing to allow for any person to submit written comments for the Director's consideration.
~~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~~Director's pending FONSI determination 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~~FONSI

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, information provided as part of the application or third-party consultants retained by the Director, and any written public comments.

(A) The Director shall make a finding related to whether the proposed development plan will result in ~~adverse~~significant impacts. In order for the Director to determine that a proposed development plan will ~~only~~not result in ~~negligible adverse~~significant impacts and to issue a ~~FONAI~~FONSI, 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~~significant 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~~FONSI 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 ~~adverse~~significantly impact a natural feature as defined by the Land Use Code;
(6) Has the potential to ~~adverse~~significantly impact natural habitat corridors identified by the City's Natural Area Department;
(7) Has potential to ~~adverse~~significantly impact historic or cultural resources within a two hundred (200) foot outer boundary of the proposed development plan; or
(8) Has potential to ~~adverse~~significantly impact disproportionally impacted communities.

(B) If the Director issues a ~~FONAI~~FONSI, the applicant does not need to submit a permit application under these Regulations. However, issuance of a ~~FONAI~~FONSI 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~~FONSI 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~~significant impacts, the Director may rescind the ~~FONAI~~FONSI 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~~ no significant impacts, or ~~FONAI~~FONSI, 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~~FONSI 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 6.6.7~~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~~FONSI and not require a permit or to not issue a ~~FONAI~~FONSI and require a permit shall be in writing and describe in detail the reasons for the determination. Subject to the fourteen (14) day comment period described in Section 6.6.4, ~~T~~the Director shall make this determination within twenty-eight (28) days after ~~the neighborhood meeting pursuant to Section 6.6.4 or~~ the date ~~receipt of~~ the preapplication review has occurred or any requested additional information or third-party consultation is received, whichever is later.

(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~~FONSI 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 6.6.8~~7~~ and 6.6.12~~1~~ and such time period shall begin from the date the appeal is decided as previously described.

6.6.6 Neighborhood Meeting

(A) Before the Director may determine that a permit application is complete pursuant to Section 6.6.8, a neighborhood meeting is required pursuant to Land Use Code Section 2.2.2. The neighborhood meeting may be held no sooner than fifteen (15) days after the date of the Director FONSI determination pursuant to Land Use Code Section 6.6.5 that a permit is required pursuant to these Regulations. Should a FONSI determination requiring a permit be appealed, the neighborhood meeting requirement will be paused until the appeal has been decided. Should a FONSI determination that no permit is required be reversed on appeal, a neighborhood meeting is required.

(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.

6.6.7~~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.

6.6.8~~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, t~~The applicant may submit a permit application only after at least ~~fourteen (14)~~ fifteen (15) days have passed since the ~~FONAI~~FONSI 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.

6.6.9~~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.

6.6.10~~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.

6.6.110 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.

6.6.121 Permit Decision Making Procedures

When an application has been determined complete by the Director pursuant to Section 6.6.87 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.

6.6.132 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.

6.6.143 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 6.6.154 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 6.6.154 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 6.6.154 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 6.6.154 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.

6.6.154 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. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.

If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.154 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 6.6.154 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~~have a significant 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~~ significant 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~~ significant 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~~ significant 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~~ significant 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~~ significant 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~~ significant 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~~ significant 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~~ significant 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~~ significant 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~~ significant 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~~ significant impact on significant trees as defined in Land Use Code Section 3.2.1.

(Q) The development plan will not have ~~an adverse~~ significant 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~~significant 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~~significant 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~~significant 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~~significant 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~~significant 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~~significant 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. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant

may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.154 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 6.6.154 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. The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.154 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 6.6.154 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~~significant 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~~FONSI 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~~FONSI 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

Amendment #1: No Pre-Application Council Review

Ordinance 071, 2023, currently allows a pre-application Council hearing for certain proposals to conduct a designated activity of state interest or develop in a designated area of state interest. If Council does not want to allow such a pre-application Council hearing, the following **motion** should be made:

I move that Section 3 of Ordinance 071, 2023, regarding Land Use Code Section 2.1.6 be amended as follows:

(1) Insert the following language into Land Use Code Subsection 2.1.6(A) after the term "PUD Overlay":

"or permit to conduct a designated activity of state interest or develop in a designated area of state interest"

and

(2) Delete subsections 2.1.6 (B), (C), (D), and (E).

The effect of the above amendment to Section 3 of Ordinance 071, 2023 is as follows (new language highlighted):

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

. . .

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 or permit to conduct a designated activity of state interest or develop in 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 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.

Amendment #2: Require Guarantee for Mitigation if FONSI Issued

If Council wants to require that the applicant provide the City with a guarantee that proposed mitigation that considered by the Director in issuing a FONSI is completed, the following **motion** should be made:

> I move that Section 10 of Ordinance 071, 2023, regarding Land Use Code Section 6.6.5 be amended by inserting the following language at the end of Subsection (D):
>
> > If the Director's decision includes consideration of proposed mitigation, the applicant must provide to the City a guarantee in the form of a development bond, performance bond, letter of credit, cash, certificate of deposit or other city-approved means to guarantee the completion of all mitigation to be constructed as shown on the approved development plan.

The effect of the above amendment to Section 10 of Ordinance 071, 2023 is as follows (new language highlighted):

(D) Permit Not Required. If the Director has made a finding of no significant impacts, or FONSI, 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. If the Director's FONSI determination included consideration of proposed mitigation, the applicant must provide to the City a guarantee in the form of a development bond, performance bond, letter of credit, cash, certificate of deposit or other city-approved means to guarantee the completion of all mitigation to be constructed as shown on the approved development plan.





May 16, 2023

1041 Regulations

Local participation, Transparency & Improved Environmental Outcomes

Kirk Longstein, AICP
Senior Environmental Planner

City of Fort Collins

City Comprehensive Plan

Conserve, protect and enhance natural resources and high-value biological resources throughout the GMA by directing development away from natural features to the maximum extent feasible.

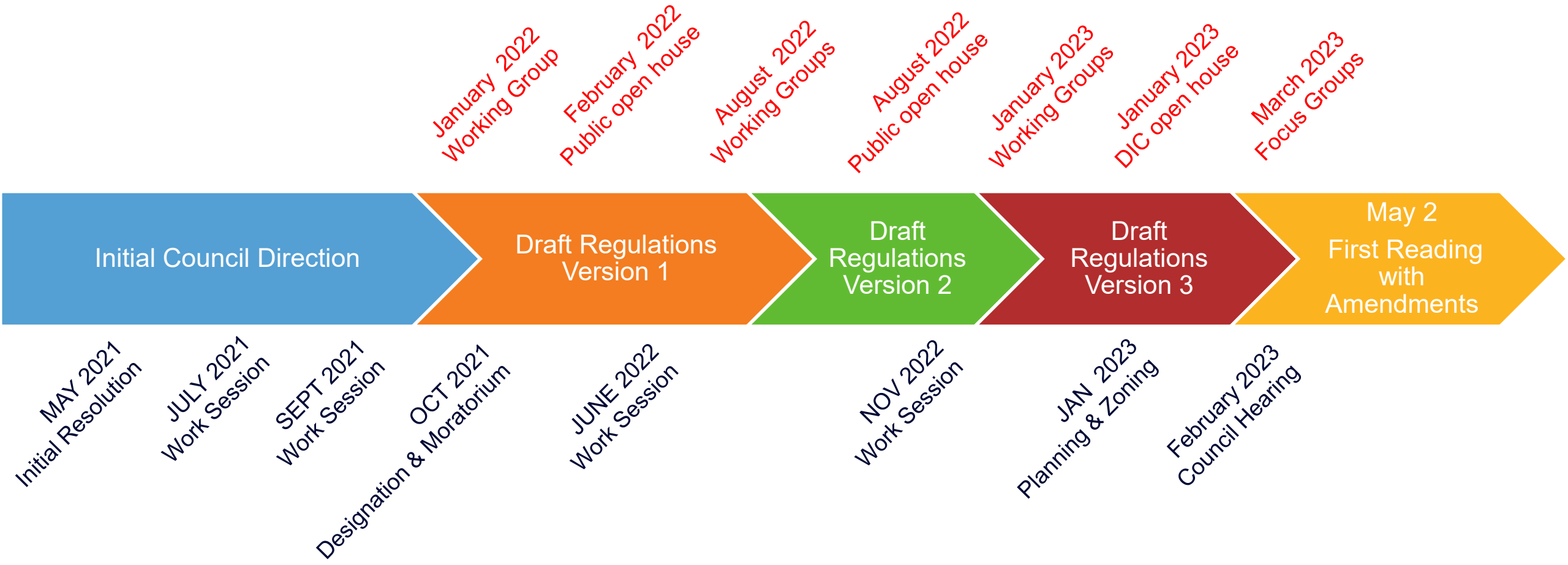
City Council Resolution

1041 Regulations may better allow the City to achieve its policy and regulatory goals in furtherance of the best interest of the citizens of Fort Collins.

City Regulatory Goals

- ✓ Address deficiencies with SPAR
- ✓ Establish applicant predictability
- ✓ Establish a meaningful public process
- ✓ Incentivize project designs that avoid impacts to critical natural habitat and cultural resources.

Where We've Been



1041 Permit Overview

Applicability of Standards – FONSI

- Easement size thresholds
- Exemptions
- FONSI

Full Permit Review

- Completeness Check
- Third-Party analysis
- Review Standards

Permit Decision Making

- Planning and Zoning
- City Council
- Issuance of a permit; conditions

Council Adopted Changes on First Reading

Council Adopted Changes – Already Reflected in Ordinance

- Amend the Code to remove pipe-size diameter and exclude projects within existing public Right of Way
- Amend the Code to add a definition that redefines the Applicability of Standards determination FONAI to a FONSI, Impact, Cumulative impacts, Significant

Council Adopted Changes – Shown in the Attached Mark Up Ordinance

- Conforming changes related to the updates to the definitions and applicability of standards determination
- Add conceptual submittal document that summarizes the potential for a significant impact.
- Move neighborhood meeting requirements to after review of the applicability of standards (i.e., FONAI determination)
- Extend comment period during the pre-application activity review.

Second Reading Amendments

Two Additional Amendments for Council Consideration During Second Reading

Staff recommended changes

	Council Decisions
1.	Delete reference to Council Pre-Application Hearing Regarding Areas and Activities of State Interest.
2.	Mitigation guarantee if FONSI issued.

Back up Slides

Potential Projects

1041 permit Applicant	Project
Northern Water	NISP
Fort Collins Loveland Water District	Foothills Tank Storage
Fort Collins Loveland Water District	Zone 5 Transmission
Boxelder Sanitation District	Boxelder Interceptor
ELCO	TBD
Fort Collins Utilities	2 potential projects in the next 10 years
CDOT	Mulberry Interchange

How is the process clear and predictable?

- ✓ Evaluate significant impacts + mitigation
- ✓ Staff provides scope of analysis to the third-party reviewer during the application completeness check.
- ✓ Application checklist sets clear expectations on how significant will be evaluated.
- ✓ Customer tools include Natural Resources Inventory, public facing maps, and GIS tools to clearly identify critical areas of protection.

Evaluate Impacts to:

- Recreational opportunities & experience
- Viewsheds & visual character
- Air quality
- Water quality
- Wetlands & riparian areas
- Terrestrial & aquatic animal life
- Terrestrial & aquatic plant life
- Other natural habitats & features
- Significant trees
- Historic & cultural resources
- Soils & geologic conditions
- Disproportionately impacted communities

City Council Permit Approval Criteria

STANDARDS:

The proposed development plan shall not have a significant impact…

- The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact.

COUNCIL Decision:

A permit may only be approved if…

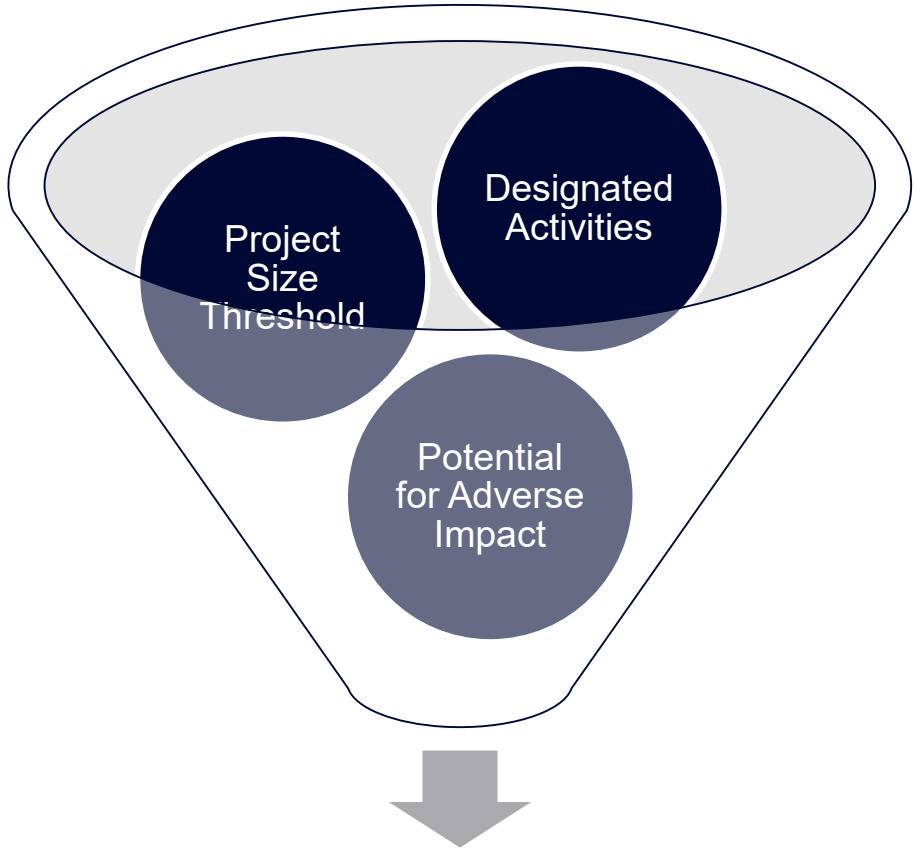
- The development plan has no significant impacts; or
- Proposed mitigation** measures sufficiently offset the impacts; or
- Council imposed conditions demonstrate compliance with the standards.

**Mitigation is a defined standard and is reviewed objectively using an analogous reference site.

Larimer County 1041

- Larimer County recently revised their 1041 regulations, which were adopted by the County Commissioners in January 2022
- Larimer County regulates a longer list of activities of state interest than currently proposed in Fort Collins, including:
  - Electric power plants
  - Nuclear power plants
  - Wind power plants
  - Electric transmission lines (69,000 volts+) and expansions of existing transmission lines
  - Electrical substations (69,000 volts+)
  - Natural gas transmission pipelines
  - Domestic water and sewer transmission lines
  - New or expanded water storage reservoirs
  - Solar energy power plants
  - State-owned and operated collector and arterial highways and interchanges
- Since 2021, only two 1041 applications have been received:
  - One domestic water transmission pipeline (NEWT 3) - *approved by the Board of County Commissioners in April 2023*
  - One large-scale solar facility - *still in completeness review*
- Because only one project has been reviewed under the new regulations, County experience has been limited so far. The first project that was reviewed did not have significant environmental impacts, so the review was pretty straightforward. For other upcoming projects, the County anticipates needing external consultant support to review technical studies.

Applicability of Standards



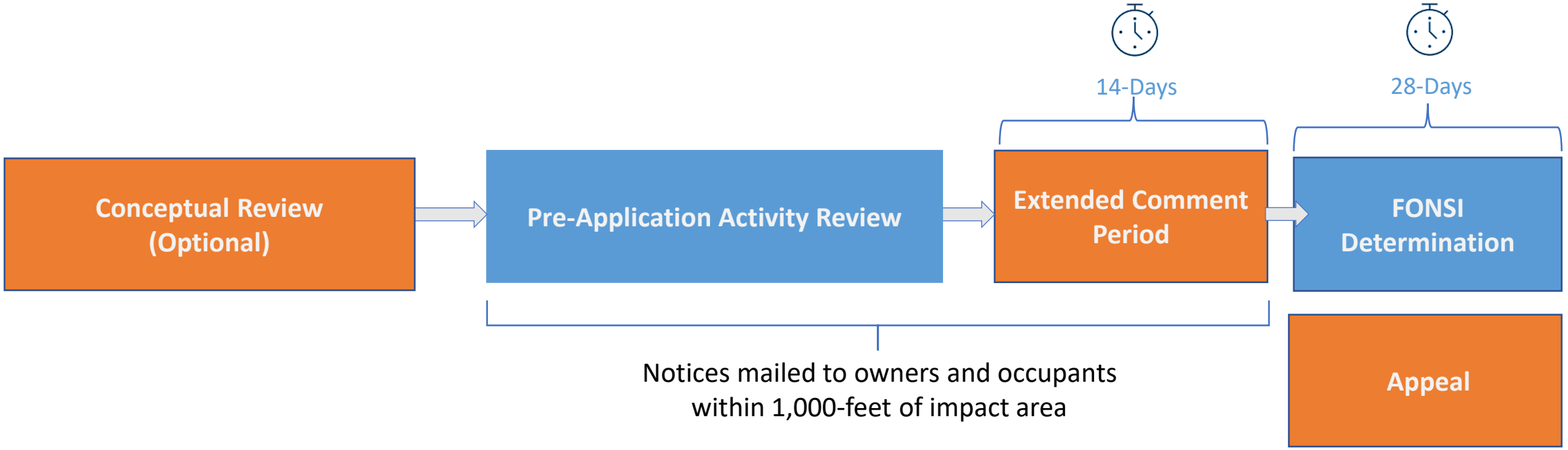
Finding of NO Significant Impact (FONSI) OR FULL PERMIT

Is the project subject to a Fort Collins 1041 permit?

1. Is the project designated by the Fort Collins Code?
   - Major new (expansion) domestic water system
   - Major new (expansion) sewage system
   - Highways & Interchanges

2. Does the project meet the defined project size thresholds?
   - If yes; FONSI review
   - If no; no additional action

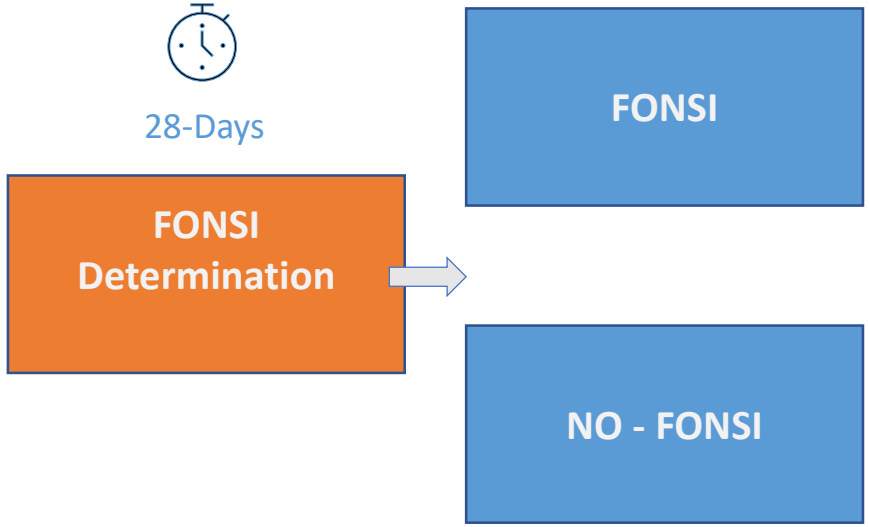
3. Does the project intersect with a geographic thresholds?
   - if yes; no FONSI without mitigation
   - if no; no permit



Key Submittal Requirements

1. Three (3) siting and design alternatives (including feasibility)
2. Ecological Characterization Study (1/2-mile radius)
3. Significant and Cumulative Impacts Summary (1/2-mile radius)
4. Conceptual mitigation plans
5. Historic documentation pursuant to Chapter 14 of the Code

Finding of No Significant Impact Determination

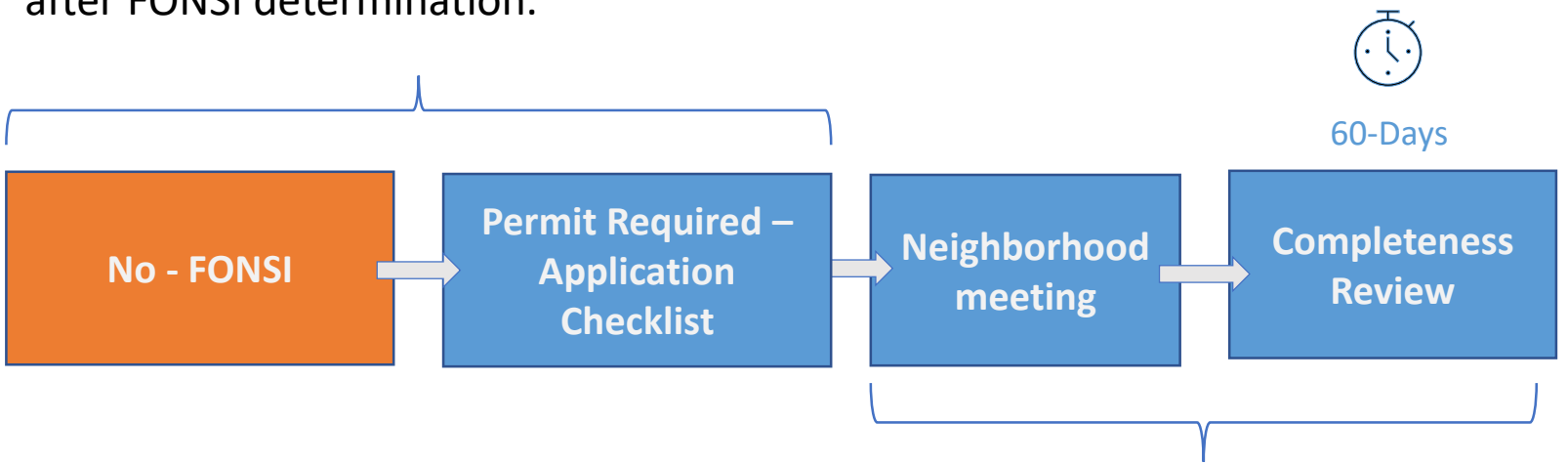


Has potential to adversely impact:

- City natural area or park
- City-owned property
- High Priority Habitat and Natural Habitat Corridors
- Natural habitat features and buffer zones
- Historic and cultural resources
- Disproportionally Impacted Communities

Completeness Check

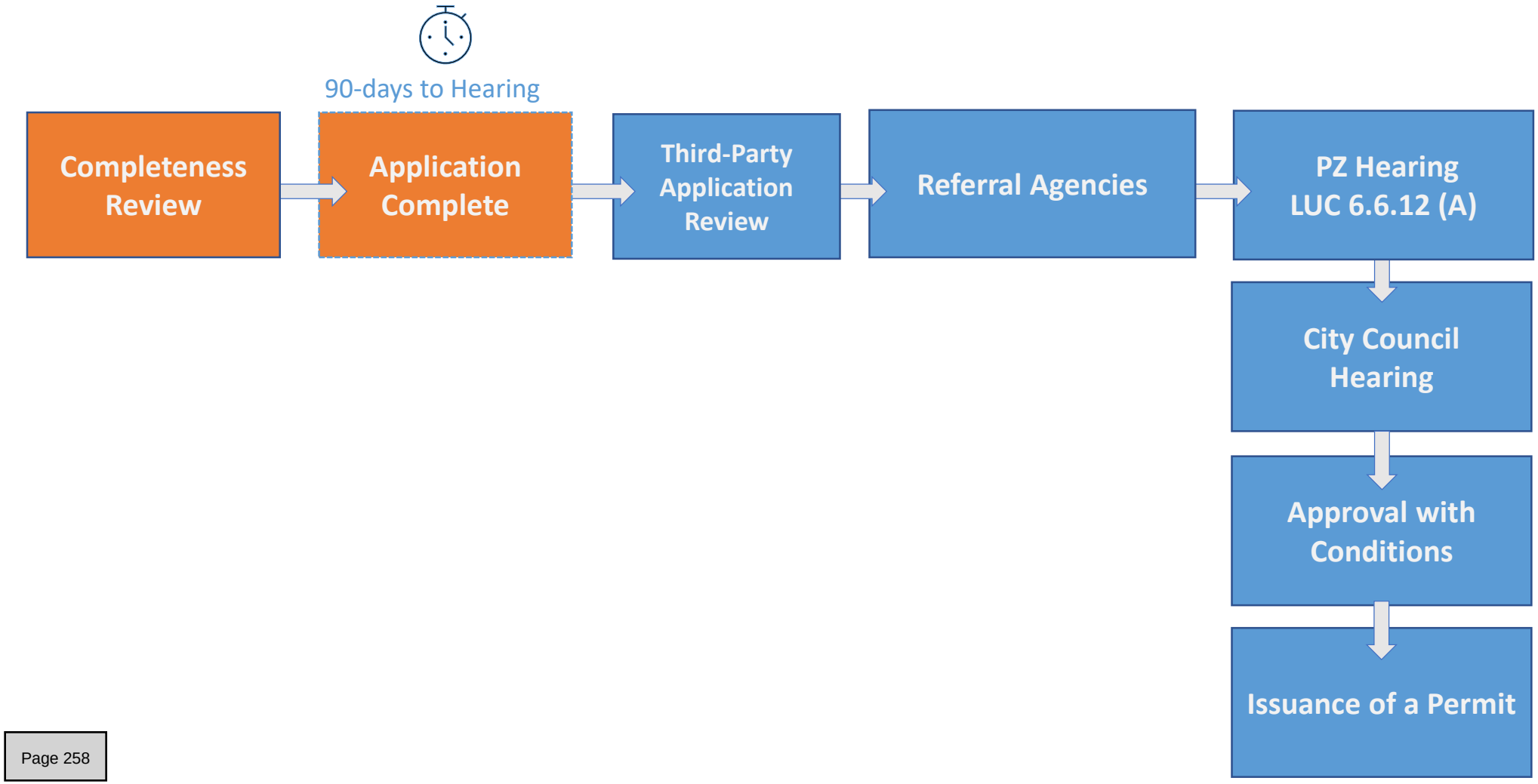
Permit Application Submittal 15-days after FONSI determination.



Administrative program design

- ✓ Submittal checklist provided by staff
- ✓ What makes an impact “significant”
- ✓ Additional analysis and third-party scope provided with FONAI determination

Full Permit Process



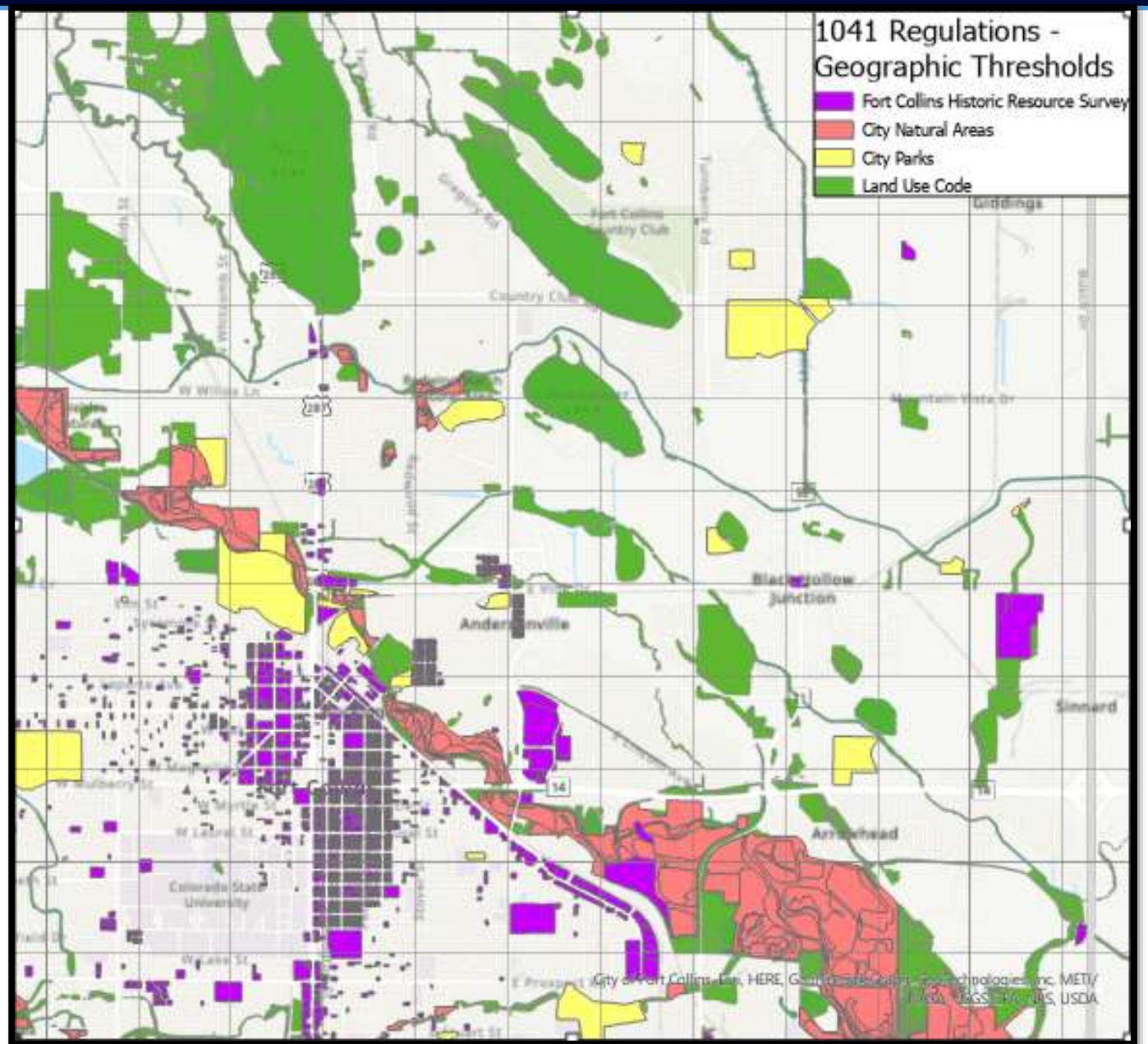
Exemptions

1. Nonconforming Uses and Structures with the exception of enlargement or expansion of any such project

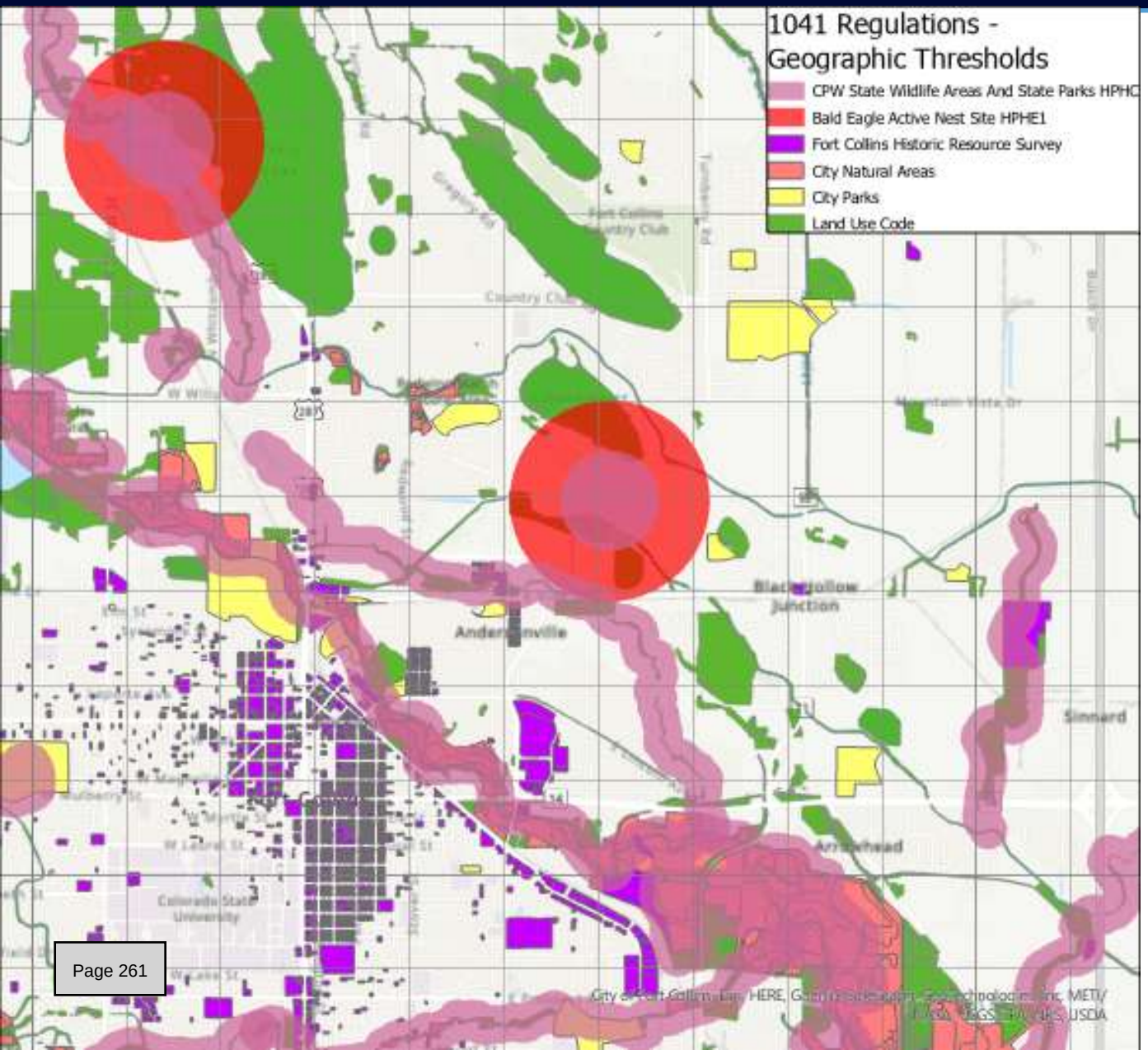
2. Any project previously approved by the Planning and Zoning Commission pursuant to the Site Plan Advisory Review (SPAR) process.

3. Proposed development plan otherwise subject to Development Review

4. Any proposed development plan issued a FONSI


1041 Regulations -
Geographic Thresholds
Fort Collins Historic Resource Survey
City Natural Areas
City Parks
Land Use Code
Andersonville
Blackhollow Junction
Simard
Arrowhead
Colorado State University

FONSI Criteria



The High Priority Habitat (HPH) table was developed by CPW to ensure that our land use development recommendations are consistent statewide.

- Aquatic Resources
- Migratory Birds
- Big Game

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Ginny Sawyer, Project and Policy Manager
Ted Hewitt, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 140, 2022, Establishing a Fort Collins Minimum Wage and Associated Recordkeeping and Enforcement Provisions.

EXECUTIVE SUMMARY

The purpose of this item is to bring forth an ordinance setting a local minimum wage in compliance with HB19-1210.

BACKGROUND / DISCUSSION

In 2019, the Colorado State legislature passed a bill allowing municipalities to adopt their own minimum wage. The state house bill limits the number of municipalities establishing a local minimum wage to 10-percent of all local governments in the state and requires those considering a local wage to engage with stakeholders including chambers of commerce, small and large businesses, businesses that employ tipped workers, workers, labor unions, and community groups and consult with surrounding local governments. Currently, only the City and County of Denver has implemented a local minimum wage law.

Following the passage of the bill, Council inquired regarding a plan to analyze the possibility of Fort Collins adopting a local wage. The responding memo outlined a thorough plan and resources that were estimated at $85K-110K and a 6-month process. The effort did not move forward at that time.

In 2021, following the Council election, “Raising the Minimum Wage” was identified as a Council priority and staff began an effort to move forward.

Much of the engagement in 2022 with businesses, employees, and community groups was funneled through an on-line survey and the National Business Survey. To provide a number to react to when responding to survey questions a $15/hour wage was utilized by the survey. The use of this number may have proved misleading as Council’s direction following a September work session was in the $18-$19/hour range.

The survey efforts received approximately 1500 responses and yet it proved difficult to develop data-driven rationale to help identify a local minimum wage where benefits outweigh concerns of perceived or real unintended consequences. In October of 2022, staff attempted to identify wage ranges based on communities with higher local wages and the wage as a percent of the living wage. This methodology offered a range of $14.34 to $17.79 for Fort Collins.

The MIT Living Wage Calculator shows the following 2023 living wage estimates in Fort Collins:

- Single Adult: $18.92/hr
- Single Adult/1 Child: $39.49/hr
- Single Adult/2 Children: $52/hr

Other engagement efforts included meetings with community members, the Fort Collins Chamber, the Latino Chamber, correspondence with local labor unions (including FOP, PFA, Colorado ALF-CIO, PSD), outreach to health sector organizations, non-profits, and neighboring communities.

An ordinance was brought to Council in November 2022. Due to the short timeframe to implement (January 1, 2023) and the lack of outreach representation from the lowest-income earners, Council delayed ordinance consideration to May 16, 2023, with direction to engage more low-income earners.

2023 Outreach efforts included one-on-one interactions, small meetings, tabling events, and emails or brief presentations to regional groups and partners. Staff also worked to engage housing providers, housing program residents, the Larimer County Workforce Center, Larimer County Health and Human Services, Denver County Health and Human Services, and non-profit grant managers.

Questions from Previous Work Session

1. What happens to benefit cliff information at less than 40 hours a week?

    a. Attached materials show benefit cliff impacts using resident proposed wage schedule at 20,25,30, and 40 hours/week across three family types. Single earners see the highest level of ineligibility starting at 25 hours/week.

2. Provide cost of living to wage analysis similar to data provided in this article from Councilmember Canonico (https://smartasset.com/data-studies/cities-with-the-highest-and-lowest-real-minimum-wage-2023)

    a. Staff did attempt to recreate the methodology utilized in the article with data that was available.

Local Minimum Wage	Wage Adjusted for Cost of Living using PSD as Geographic Reference	Wage Adjusted for Cost of Living Using Larimer County as Geographic Reference
$13.65 - current minimum wage	$12.95	$12.93
$16.65 - wage option presented on 04/11/2023	$15.80	$15.77
$17.29 - current Denver minimum wage	$16.40	$16.37

3. Are tipped wages a Federal or State requirement?

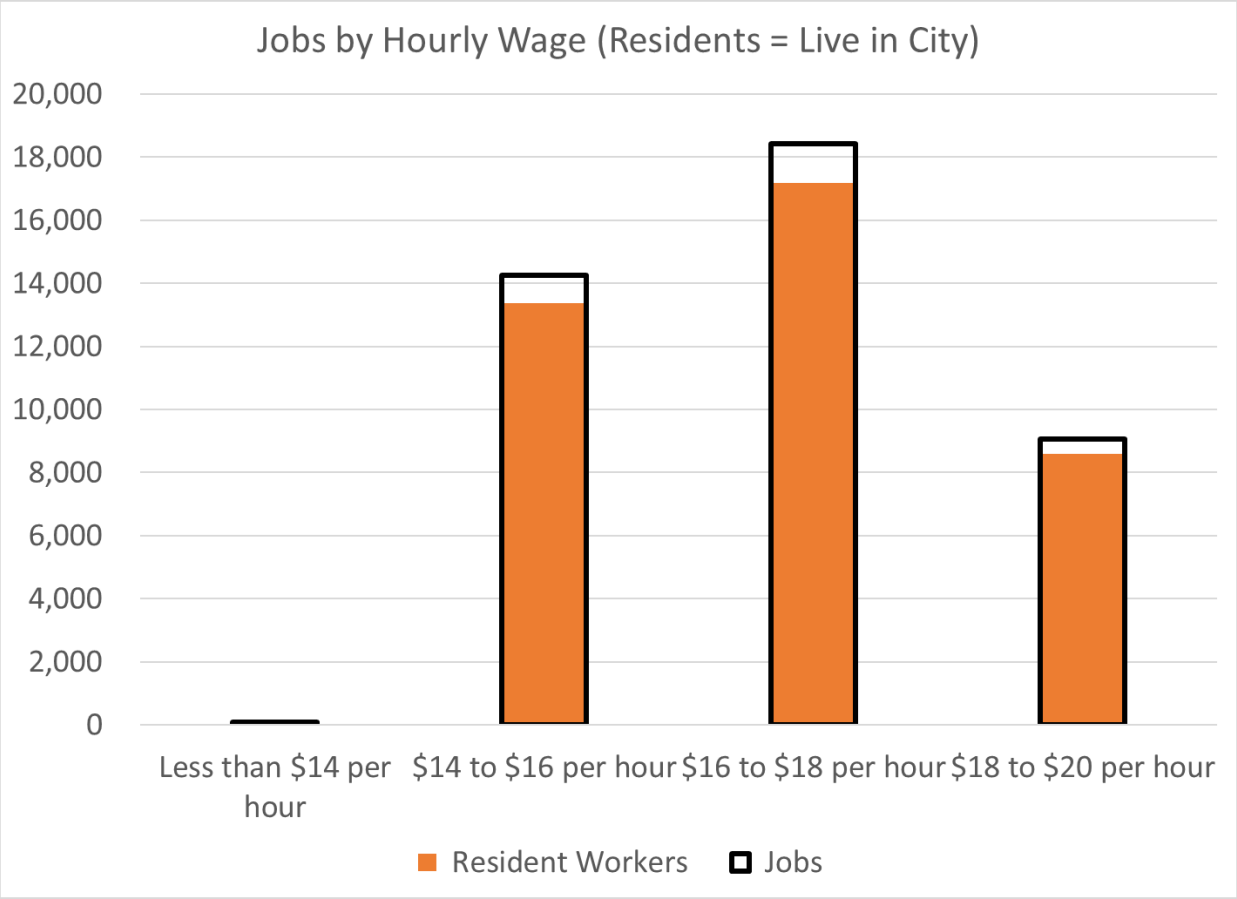
    a. Tipped earners cannot be exempted from a minimum wage ordinance. Tipped earners are addressed at both the Federal and state levels. Eliminating tipped wages at the state level would default the tipped earnings to the federal levels ($7.25/hour)

4. Show information on City's move to $15/hour.

a. The City submitted a $500K budget offer in 2022 to ensure $15/hour minimum wage for all City jobs. $16.07 is approximately a 1% increase and $17.29 is approximately a 5.5% increase.

5. What data do we have on employee commuters (both in and out of city?)

   a. Below is a snapshot of employee commuter information derived from Lightcast a reputable third-party data aggregator. The chart shows that the majority (93.8%) of jobs in the city paying less than or equal to $20 per hour are filled by residents of the community. The highest in-commuting rate at 6.7% of all jobs occurs at the wage range of $16 to $18 per hour.



6. Show comparisons of national vs. local wages in similar industries.

   a. We do not have data on this that adjusts for cost of living.

7. What data do we have on who the minimum earners are?

   a. We do not have statistical data on this. From our online questionnaire we have the following information:

      i. Over 1100 employee responses.
      ii. Majority of respondents work between 30-50 hours/week.
      iii. Majority of respondents have been at their job(s) 0-2 years.
      iv. 15% of respondents (129) report making minimum wage.
      v. 38% of respondents (334) reported being college students.
      vi. 1% (4) reported being high school students.
      vii. 8.4% (69) respondents were between 15-19 years old. 48% (396) were between 20-29.

a. From interviews with several local employers, including a few non-profits, locally owned restaurants, and trades businesses, we have learned anecdotally that most minimum wage and/or tipped workers are not minors (less than 18 years old).

8. How might an increase in the local minimum wage impact our locally owned small businesses?

   a. Since the April work session, staff have connected with several locally owned small businesses (restaurants of a variety of types, some trades, non-profits, and services).

   b. Several of these businesses shared portions of their payroll data with staff to enable some clearer understanding of the current labor market and impacts on wages.

   c. Staff learned several things about the current labor situation at locally owned small businesses:

      i. Most locally owned small businesses are paying the current state minimum wage of $13.63 per hour to servers and "front of house" staff. In most restaurants, pay includes a pooled tip system that increases the average hourly wage to over $22 per hour.
      ii. "Back of house" staff (kitchen staff, dishwashers, etc.) are being paid between $15 and $25 per hour depending on position.
      iii. Most hourly staff work an average of 22 to 30 hours per week at these businesses. They may work additional jobs elsewhere.

   d. Staff also learned about the potential impacts of a $17.29 per hour minimum wage:

      i. This increase would result in payroll costs rising between 15 and 35 percent depending on the type of business.
      ii. Currently, payroll costs represent about 20 to 25 percent of total costs. Therefore a 15 to 35 percent increase in labor costs could drive up total costs between 3 and 9 percent.
      iii. Additionally, many business operators suggested they may need to reduce the wage of tipped earners down by the allowed $3.02 per hour, which is not common practice today, to offset the rise in labor costs. This reaction would reduce the effect of an increase.

   e. Additional insight:

      i. Several small locally owned businesses reported voluntarily providing additional benefits such as vacation time, medical insurance, and retirement contributions that go beyond Federal and State requirements.
      ii. One small business reports a strong focus on training and coaching to grow staff into higher paying positions. Currently 58% of their front of house staff are in a position higher than the one they were hired into with higher wages.
      iii. Many small businesses are beginning to receive their property tax valuations or learning of them from their landlords. In some cases, there has been a doubling of value which results in higher property tax bills in addition to other escalating costs.

9. Request for previous information on favorable impacts of a higher minimum wage included in previous meeting material (September 2022 meeting materials)

Boulder County Consortium Regional Effort

The Boulder County Consortium is made up of Boulder County, City of Boulder, Town of Erie, town of Jamestown, City of Lafayette, City of Longmont, City of Louisville, Town of Lyons, Town of Netherland, Town of Superior, Town of Ward, and Town of Broomfield.

The Consortium has hosted one webinar and convened a working group of communities interested in local minimum wage (Boulder County, City of Boulder, Longmont-participating but no Council direction to pursue). Those interested are considering IGAs between the communities and they are targeting a 2024 implementation. While no wage has been discussed an advocacy group is proposing $25 by 2028. Staff continues to join the working group to stay apprised of actions.

CITY FINANCIAL IMPACTS

The City of Fort Collins committed to paying $15/hour minimum for all jobs starting in 2023. This was reflected in the City Manager Recommended budget and is $500K amount for the 2023-24 timeframe.

ORDINANCE OPTIONS

Option A: Slower ramp schedule provided in November 2022.

Year	CPI	State Minimum Wage	Annual Salary 40hrs/wk & 2 holidays	Increase	LMW	Annual Salary 40hrs/wk & 2 holidays	Difference
2024	5%	$14.33	$29.6K	$1.00	$14.65	$30.2K	$0.32
2025	3%	$14.76	$30.5K	$1.00	$15.65	$32.3K	$0.89
2026	3%	$15.21	$31.4K	$1.00	$16.65	$34.4K	$1.44
2027	3%	$15.66	$32.3K	3%	$17.15	$35.4K	$1.49
2028	3%	$16.13	$33.3K	3%	$17.66	$36.5K	$1.53
2029	3%	$16.62	$34.3K	3%	$18.19	$37.6K	$1.58
2030	3%	$17.11	$35.3K	3%	$18.74	$38.7K	$1.63

Option B: Resident provided schedule that is in-between the November 2022 options.

Year	CPI	State Minimum Wage	Annual Salary 40hrs/wk & 2 holidays	Increase	LMW	Annual Salary 40hrs/wk & 2 holidays	Difference
2024	5%	$14.33	$29.6K	$0.53	$14.86	$30.7K	$0.53
2025	3%	$14.76	$30.5K	$1.21	$16.07	$33.2K	$1.31
2026	3%	$15.21	$31.4K	$1.22	$17.29	$35.7K	$2.08
2027	3%	$15.66	$32.3K	$0.52	$17.81	$36.7K	$2.14
2028	3%	$16.13	$33.3K	3%	$18.34	$37.9K	$2.21

Year	CPI	State Minimum Wage	Annual Salary 40hrs/wk & 2 holidays	Increase	LMW	Annual Salary 40hrs/wk & 2 holidays	Difference
2029	3%	$16.62	$34.3K	3%	$18.89	$39.0K	$2.27
2030	3%	$17.11	$35.3K	3%	$19.46	$40.2K	$2.35

ATTACHMENTS

1. Ordinance for Consideration
2. Updated Benefit Cliff Information
3. Presentation

ORDINANCE NO. 140, 2022
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ESTABLISHING A FORT COLLINS MINIMUM WAGE AND
ASSOCIATED RECORDKEEPING AND ENFORCEMENT PROVISIONS

WHEREAS, despite a statewide minimum wage rate, many working Fort Collins residents struggle to afford the basic necessities of life; and

WHEREAS, the health and welfare of all Fort Collins residents is benefited and advanced when workers are paid a livable wage and establish self-sufficiency; and

WHEREAS, the City of Fort Collins seeks to confront the issue of wage inequity and cost of living affordability in the community; and

WHEREAS, during the 2019 legislative session, the Colorado General Assembly enacted House Bill 19-1210, which empowered local governments to establish a jurisdiction-wide minimum wage in accordance with certain requirements and restrictions mandated by state law; and

WHEREAS, the Colorado General Assembly found that, while state minimum wage laws can set a useful floor for workers and businesses, local governments should be able to listen to their residents and enact local minimum wage laws that better address their unique needs; and

WHEREAS, the City has consulted with surrounding local governments and engaged with community stakeholders, including workers, chambers of commerce, small and large businesses, businesses that employ tipped workers, labor unions and numerous community groups; and

WHEREAS, the City Council believes it is in the best interest of the people of Fort Collins to enact a higher local minimum wage to ensure that people within the jurisdiction are paid sufficient wages to afford the basic necessities of life; and

WHEREAS, the City Council believes the higher local minimum wage should reach **[insert selected option]** per hour by the year 2026 and thereafter be adjusted annually for inflation.

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 Chapter 13 of the Code of the City of Fort Collins is hereby amended to add a new Article III, entitled Fort Collins Minimum Wage, which reads in its entirety as follows:

ARTICLE III
FORT COLLINS MINIMUM WAGE

Sec. 13-26. Definitions.

For purposes of this Article, the following definitions shall apply:

"*Aggrieved party*" shall mean a worker or other person who suffers tangible or intangible harm due to an employer or other person's violation of this Article;

"*Employ, employed, or employed by*" shall mean to suffer or permit to work;

"*Employer*" shall mean any corporation, proprietorship, partnership, nonprofit, joint venture, association, individual, limited liability company, business trust, or any person or group of persons, and any of the foregoing acting directly or indirectly in the interest of an employer in relation to a worker, and any successor thereof;

"*Food and beverage worker"* shall mean a worker for any employer that prepares and offers for sale food or beverages for consumption either on or off an employer's physical premises;

"*Successor"* shall mean any person to whom an employer, upon quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of employer's property, whether real or personal, tangible or intangible, of the employer's business;

"*Tips"* shall mean a verifiable sum presented directly and customarily by customers as a gift or gratuity in recognition of some service performed for customers by the person receiving the tip;

"*Unemancipated minor"* shall mean a person less than eighteen (18) years of age who does not maintain sole or primary responsibility for their own support, is not married or domiciled separately from their parents or guardian, and is unable to show that his or her well-being is substantially dependent on being gainfully employed;

"*Work"* shall mean any services performed on behalf of or for the benefit of an employer whether on an hourly, piecework, commission, time, task, or other basis but shall not include services performed as an independent contractor; and

"*Worker"* shall mean a person performing work, and includes, but is not limited to: full time employees, part-time employees, temporary workers, agents, and any other person or entity performing work on behalf of or for the benefit of an employer. This definition shall not apply to work performed by independent contractors while acting solely in such capacity or by persons providing volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation.

Sec. 13-27. Fort Collins minimum wage.

Every employer in Fort Collins shall ensure its workers are paid not less than the "Fort Collins Minimum Wage" as calculated in § 13-28, subject to the terms of this Article.

Sec. 13-28. Minimum wage calculation.

(a) The Fort Collins Minimum Wage, exclusive of fringe benefits and any other deductions or credits, except as described herein, shall be calculated as follows:

Option 1:

(1) Beginning January 1, 2024: Fourteen dollars and sixty-five cents ($14.65) per hour;

(2) Beginning January 1, 2025: Fifteen dollars and sixty-five cents ($15.65) per hour;

(3) Beginning January 1, 2026: Sixteen dollars and sixty-five cents ($16.65) per hour;

(4) Beginning January 1, 2027, and annually thereafter, the Fort Collins Minimum Wage rate shall increase by an amount corresponding to the increase in the Consumer Price Index (Urban Wage Earners and Clerical Workers, Denver-Aurora-Lakewood), or its successor index as published by the U.S. Bureau of Labor Statistics or its successor agency, ("CPI") by an amount corresponding to the increase in CPI observed between the first half of the year two (2) years prior and the first half of the year prior to the effective date of the increase, as calculated by the Financial Officer; provided however that such increase shall be not less than two percent (2%) and not more than five percent (5%).

Option 2:

(1) Beginning January 1, 2024: Fourteen dollars and eighty-six cents ($14.86) per hour;

(2) Beginning January 1, 2025: Sixteen dollars and seven cents ($16.07) per hour;

(3) Beginning January 1, 2026: Seventeen dollars and twenty-nine cents ($17.29) per hour;

(4) Beginning January 1, 2027, and annually thereafter, the Fort Collins Minimum Wage rate shall increase by an amount corresponding to the increase in the Consumer Price Index (Urban Wage Earners and Clerical Workers, Denver-Aurora-Lakewood), or its successor index as published by the U.S. Bureau of Labor Statistics or its successor agency, ("CPI") by an amount corresponding to the increase in CPI observed between the first half of the year two (2) years prior and the first half of the year prior to the effective date of the increase, as calculated by the Financial Officer; provided however that such increase shall be not less than two percent (2%) and not more than five percent (5%).

(b) Tips regularly and actually received by a food and beverage worker may be applied to an employer's obligation to pay such food and beverage worker the Fort Collins Minimum Wage. However, no more than three dollars and two cents ($3.02) per hour in tip income ("tip credit") may be used to partially offset payment of the Fort Collins Minimum Wage.

(c) Employers may pay wages for work performed equal to the then-current Fort Collins Minimum Wage reduced on an hourly basis by up to fifteen percent (15%) when compensating unemancipated minor workers for work performed.

Sec. 13-29. Exclusions.

(a) The Fort Collins Minimum Wage shall not apply to work that:

(1) is not performed physically within the geographic boundaries of the City;

(2) is performed by a worker totaling less than four (4) hours in any given week for a particular employer within the geographic boundaries of the City; or

(3) occurs in the City solely for the purpose of traveling through Fort Collins from a point of origin outside of the City to a destination outside of Fort Collins, with no employment-related or commercial stops in the City except for refueling or the worker's personal meals or errands.

Sec. 13-30. Recordkeeping Requirements & Inspection.

(a) All employers shall retain payroll records for each worker sufficient to document and verify work performed by and wages paid to each worker for a period of at least three (3) years after the end of the last calendar year of employment.

(b) Each worker or former worker shall be entitled to and obtain a true copy of the records required to be retained in subsection (a) of this section, regarding said worker, at a reasonable time during normal business hours.

(c) For purposes of adjudicating a claim under §13-31, should an employer not maintain or retain adequate records documenting the manner and amount of wages paid for work performed pursuant to this Article, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Article for the periods and for each worker for whom adequate records were not retained or access to such records was not timely provided.

Sec. 13-31. Private right of action.

(a) The City Council enacts this section pursuant to Colorado Revised Statutes § 8-6-101(3)(b), which authorizes the City to create a private right of action to enforce the Fort Collins Minimum Wage.

(b) Within three (3) years of an alleged violation of this Article, any aggrieved party may bring a civil action in Colorado district or county court, as appropriate, against an employer alleged to have violated this Article, and, upon prevailing, shall be entitled to such legal and equitable relief as may be appropriate to fully remedy the violation including, without limitation:

(1) The payment of any wages unlawfully withheld and any unpaid overtime based on those wages, including amounts that accrued after the filing of the civil action;

(2) Interest on unpaid wages and overtime compensation at a rate of twelve percent (12%) per annum from the date such wages were first due;

(3) The payment of an additional sum as a penalty in the amount of one hundred dollars ($100.00) to each worker whose rights under this Article were violated for each day that the violation occurred or continued;

(4) Reinstatement of employment, if applicable;

(5) Other appropriate injunctive relief; and

(6) An award of reasonable attorney fees and costs.

Sec. 13-32. Violations.

Any employer who knowingly pays a worker less than the Fort Collins Minimum Wage who is entitled to the Fort Collins Minimum Wage as required by this Article commits a civil infraction and is subject to the penalty provisions of § 1-15(f). Penalties under this Section are in addition to any remedy issued under § 13-31.

Sec. 13-33. Application of this Article to prevailing wage and contract minimum wage.

Nothing in this Article shall be deemed to lessen any obligations of employers to comply with the City Code concerning payment of prevailing wage and/or the contract minimum wage to workers. Should a prevailing wage or contract minimum wage requirement be greater than the Fort Collins Minimum Wage requirement, the greater wage rate shall be paid. If the Fort Collins Minimum Wage requires payment of a higher wage rate than an applicable prevailing wage or contract minimum wage requirement for work, when applicable, the Fort Collins Minimum Wage shall be paid to any worker for such work.

Sec. 13-34. Relation to other minimum wage laws.

If a higher minimum wage rate is established by applicable state or federal law or rules than the Fort Collins Minimum Wage, employers shall be bound to the higher minimum wage.

Sec. 13-35. Recommended changes to the Fort Collins Minimum Wage.

The City Manager shall regularly monitor the Fort Collins Minimum Wage and its purchasing power, the Colorado statewide minimum wage, the federal minimum wage, and state and federal minimum wage laws. The City Manager shall annually bring to the City Council recommendations regarding any desirable or legally required changes to the Fort Collins Minimum Wage.

Introduced, considered favorably on first reading and ordered published this 16th day of May, 2023, and to be presented for final passage on the 6th day of June, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 6th day of June, 2023.

Mayor

ATTEST:

City Clerk

UPDATED BENEFIT CLIFF

	SNAP	Medicaid	CHP+	Housing Catalyst Rental Assistance	LEAP	CCCAP
	Gross Monthly Income Limit for Eligibility	Approximate Monthly Income Limit for Eligibility	Monthly Income Limit for Eligibility	Approximate Monthly Income Limit for Eligibility	Monthly Income Limit for Eligibility	Monthly Income Limit for Eligibility
Single earner	$2,266.00	$1,507.00	$2,945.00	$5,008.33	$2,880.00	N/A
Single earner, 1 child	$3,072.00	$2,167.00	$3,968.00	$5,720.83	$3,766.00	$3,433.50
Single earner, 2 children	$3,840.00	$2,726.00	$4,990.00	$6,437.50	$4,652.00	$4,320.00

	Supplemental Nutrition Assistance Program (SNAP)					
	$16.65/hr LMW			$17.29/hr LMW		
	Single earner	Single earner, 1 child	Single earner, 2 children	Single earner	Single earner, 1 child	Single earner, 2 children
20 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
25 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
30 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
40 hours/week	Ineligible	Eligible	Eligible	Ineligible	Eligible	Eligible

	Health First Colorado (Medicaid)					
	$16.65/hr LMW			$17.29/hr LMW		
	Single earner	Single earner, 1 child	Single earner, 2 children	Single earner	Single earner, 1 child	Single earner, 2 children
20 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
25 hours/week	Ineligible	Eligible	Eligible	Ineligible	Eligible	Eligible
30 hours/week	Ineligible	Eligible	Eligible	Ineligible	Ineligible	Eligible
40 hours/week	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible

	Child Health Plan Plus (CHP+)					
	$16.65/hr LMW			$17.29/hr LMW		
	Single earner	Single earner, 1 child	Single earner, 2 children	Single earner	Single earner, 1 child	Single earner, 2 children
20 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
25 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible

30 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
40 hours/week	Eligible	Eligible	Eligible	Ineligible	Eligible	Eligible

	Housing Catalyst Rental Assistance					
	$16.65/hr LMW			$17.29/hr LMW		
	Single earner	Single earner, 1 child	Single earner, 2 children	Single earner	Single earner, 1 child	Single earner, 2 children
20 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
25 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
30 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
40 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible

	Low-Income Energy Assistance Program (LEAP)					
	$16.65/hr LMW			$17.29/hr LMW		
	Single earner	Single earner, 1 child	Single earner, 2 children	Single earner	Single earner, 1 child	Single earner, 2 children
20 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
25 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
30 hours/week	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible
40 hours/week	Ineligible	Eligible	Eligible	Ineligible	Eligible	Eligible

	Colorado Childcare Assistance Program (CCCAP)					
	$16.65/hr LMW			$17.29/hr LMW		
	Single earner	Single earner, 1 child	Single earner, 2 children	Single earner	Single earner, 1 child	Single earner, 2 children
20 hours/week	N/A	Eligible	Eligible	N/A	Eligible	Eligible
25 hours/week	N/A	Eligible	Eligible	N/A	Eligible	Eligible
30 hours/week	N/A	Eligible	Eligible	N/A	Eligible	Eligible
40 hours/week	N/A	Eligible	Eligible	N/A	Eligible	Eligible



City of Fort Collins

Local Minimum Wage Consideration

City Council Regular Meeting

May 16, 2023

Consider an ordinance to set a Local Minimum Wage (LMW)

Council Priority: Raise the Minimum Wage

Process:

- HB19-1210 outlines process and requirements
- Economic Analysis and Engagement work
- Council Work Sessions: 2022 - May 10 (Mid-Cycle check-in), July 12, September 6; 2023 – April 11
- Council Regular Meetings: 2022 - November 15; 2023 - May 16

Ordinance consideration November 2022

- Initiative delayed to May 16, 2023
  - Target outreach to low-income earners
  - More regional conversation
  - Longer adjustment period for employers
  - If adopted, implementation January 1, 2024
  - Applies to all employers within Fort Collins

HB19-1210

- Allows local governments to establish minimum wage laws.
- Only 10% of Colorado municipalities allowed to adopt local wage.
- Local wage must take effect on the same day as the statewide minimum wage increase.
- If wage is higher than the statewide minimum the local wage can only increase each year by $1.75 or 15%, whichever is higher, until the local wage reaches the amount enacted by the local government.
- Communities considering a local wage must:
    - Engage with stakeholders including chambers of commerce, small and large businesses, businesses that employ tipped workers, workers, labor unions, and community groups, and;
    - Consult with surrounding local governments.

Reached/Attempted to reach:

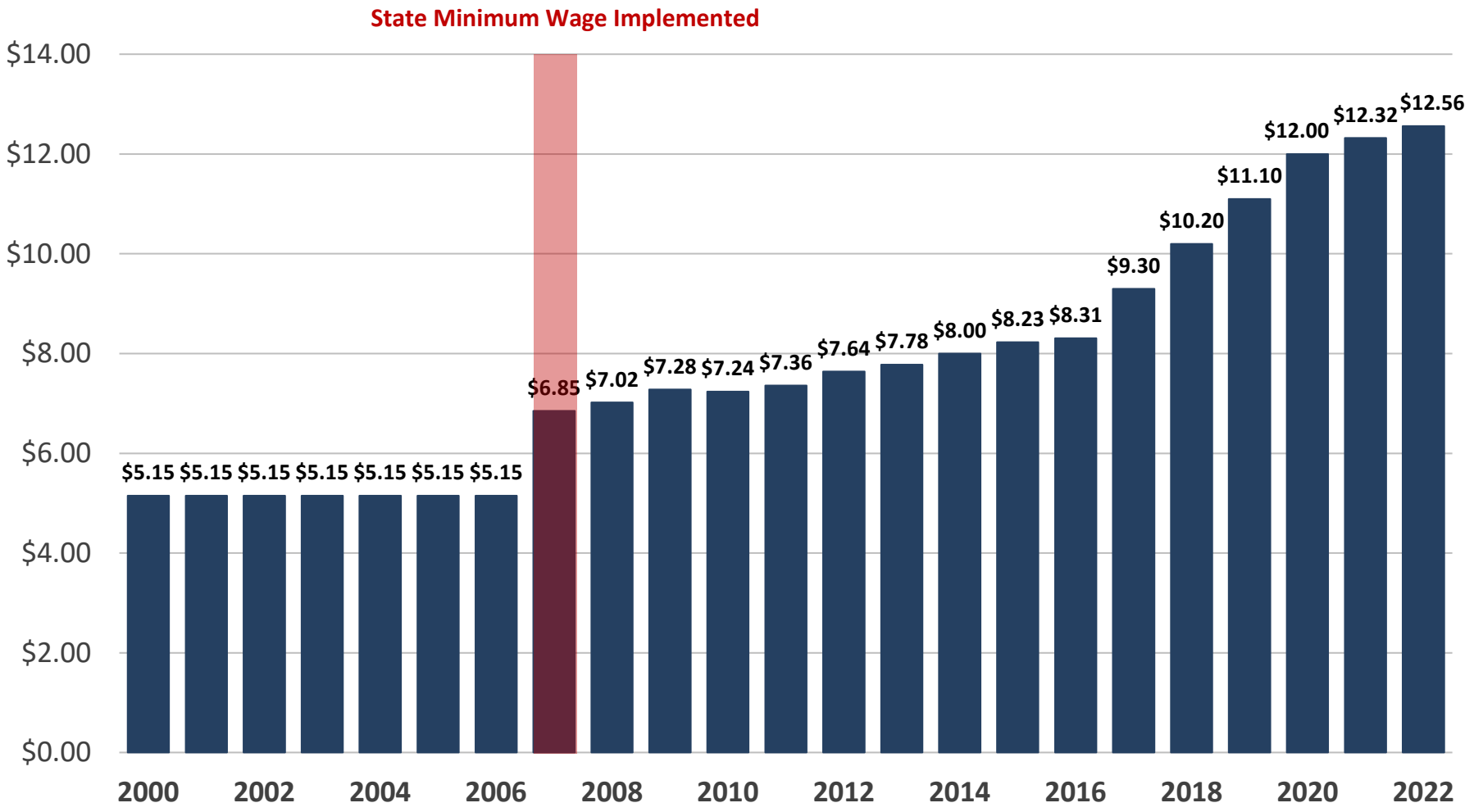
- Regional groups and partners
- Housing providers/ housing program residents
- Larimer County Workforce Center
- Larimer County Health and Human Services
- Denver County Health and Human Services
- Non-profit grant managers
- Fort Collins Chamber of Commerce
- Latino Chamber of Commerce
- Restaurant owners, downtown hospitality and retailer groups
- Economic Advisory Board
- Community members
- Healthcare sector
- Non-profit contacts
- Labor union representation
- CSU

2022 Survey/Questionnaire

- Over 1100 employee responses.
- Majority of respondents work between 30-50 hours/week.
- Majority of respondents have been at their job(s) 0-2 years.
- 15% of respondents (129) report making minimum wage.
- 38% of respondents (334) reported being college students.
- An over-whelming majority spoke to housing costs.

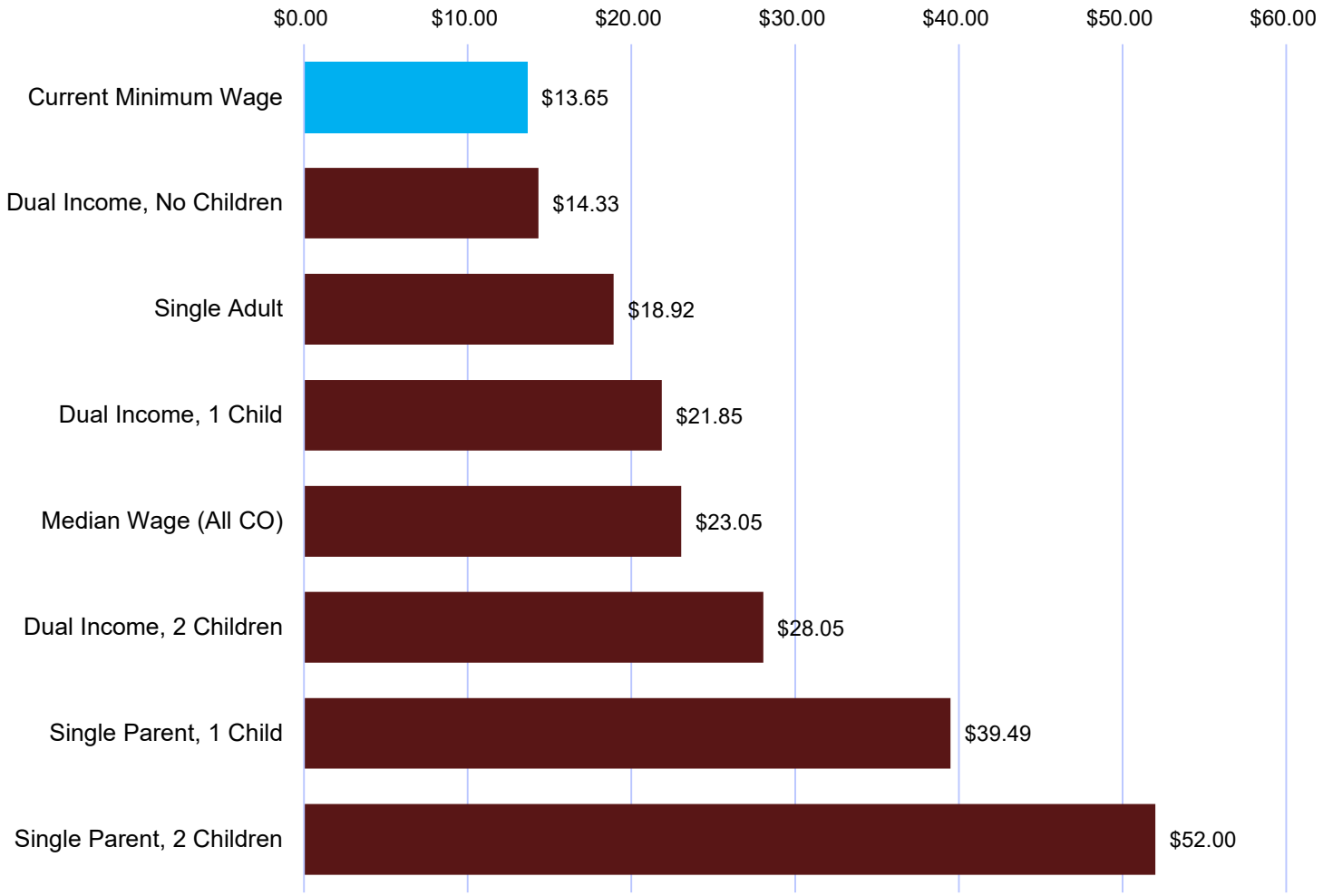
Minimum Wage History in Colorado

- 2023 minimum wage is $13.65/hour ($10.63/hour for tipped employees)
- 2023 first quarter inflation estimates are projected at 4.3%.
- 4.3% adjustment to current wage equals $14.24.



Source: Economic & Planning Systems

Living Wage by Household Type, Fort Collins



https://livingwage.mit.edu/metros/22660 (2022-23 Update)

Ordinance includes:

- LMW amounts and schedules.
    - Option A is from November 2022 options ($17.15 by 2027)
    - Option B resident provided option ($17.81 by 2027)
- CPI adjustments starting in 2028 with a 2% floor and 5% ceiling in adjustment
- Clarity on existing state rules/process
    - Minors can be paid 15% less than adopted wage
    - Tipped employee wage will be $3.02 less than adopted wage
    - Ability and intent for Colorado State Department of Employee and Labor to receive and investigate complaints
    - Cases would go to District or County court (not municipal court)
- A provision that the City will monitor state and federal minimum wages and bring recommendations to Council as needed

Year	CPI	State Minimum Wage	Annual Salary 40hrs/wk & 2 holidays	Increase	LMW	Annual Salary 40hrs/wk & 2 holidays	Delta
2024	5%	$14.33	$29.6K	$1.00	$14.65	$30.2K	$0.32
2025	3%	$14.76	$30.5K	$1.00	$15.65	$32.3K	$0.89
2026	3%	$15.21	$31.4K	$1.00	$16.65	$34.4K	$1.44
2027	3%	$15.66	$32.3K	3%	$17.15	$35.4K	$1.49
2028	3%	$16.13	$33.3K	3%	$17.66	$36.5K	$1.53
2029	3%	$16.62	$34.3K	3%	$18.19	$37.6K	$1.58
2030	3%	$17.11	$35.3K	3%	$18.74	$38.7K	$1.63

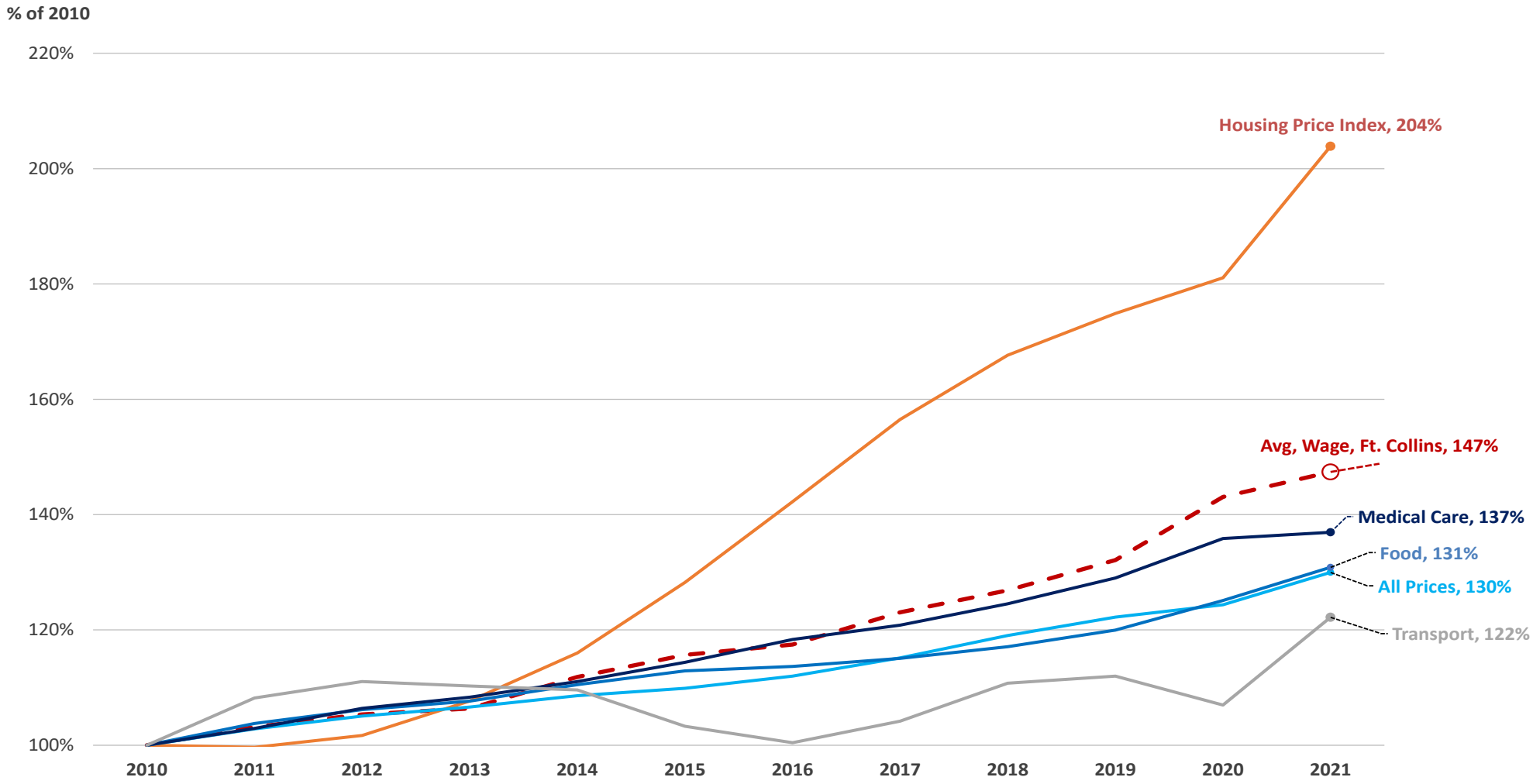
Year	CPI	State Minimum Wage	Annual Salary 40hrs/wk&2 holidays	Increase	LMW	Annual Salary 40hrs/wk&2 holidays	Delta
2024	5%	$14.33	$29.6K	$0.53	$14.86	$30.7K	$0.53
2025	3%	$14.76	$30.5K	$1.21	$16.07	$33.2K	$1.31
2026	3%	$15.21	$31.4K	$1.22	$17.29	$35.7K	$2.08
2027	3%	$15.66	$32.3K	$0.52	$17.81	$36.7K	$2.14
2028	3%	$16.13	$33.3K	3%	$18.34	$37.9K	$2.21
2029	3%	$16.62	$34.3K	3%	$18.89	$39.0K	$2.27
2030	3%	$17.11	$35.3K	3%	$19.46	$40.2K	$2.35

Does Council wish to adopt a Local Minimum Wage?

If yes, Option A or B or a different amount and schedule?

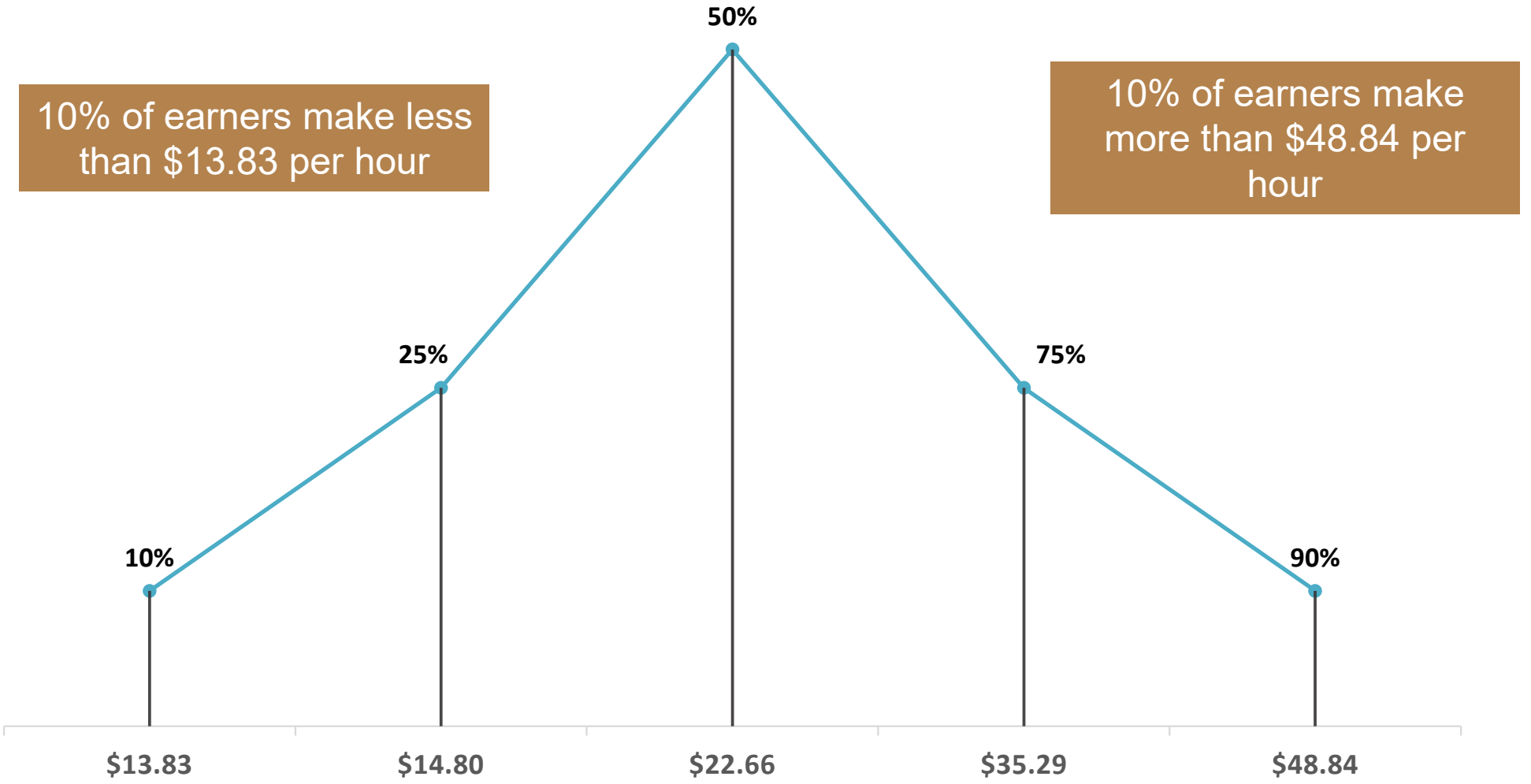
Back-Up Slides

Wages vs. Prices, Fort Collins



Source: BLS; FHFA; Economic & Planning Systems

Wage Distribution, Larimer County (2021)



Source: BLS OES; Economic & Planning Systems

Benefit Cliff Examples

	$15/hr LMW (Full time)		
	Single earner	Single earner, 1 child	Single earner, 2 children
Supplemental Nutrition Assistance Program Eligibility	Ineligible	Eligible	Eligible
Health First Colorado Eligibility	Ineligible	Ineligible	Eligible
Child Health Plan Plus Eligibility	Eligible	Eligible	Eligible
Housing Catalyst Rental Assistance Eligibility	Eligible	Eligible	Eligible
Low-income Energy Assistance Program Eligibility	Eligible	Eligible	Eligible
Colorado Childcare Assistance Program Eligibility	N/A	Eligible	Eligible

	$17/hr LMW (Full time)		
	Single earner	Single earner, 1 child	Single earner, 2 children
Supplemental Nutrition Assistance Program Eligibility	Ineligible	Eligible	Eligible
Health First Colorado Eligibility	Ineligible	Ineligible	Ineligible
Child Health Plan Plus Eligibility	Ineligible	Eligible	Eligible
Housing Catalyst Rental Assistance Eligibility	Eligible	Eligible	Eligible
Low-income Energy Assistance Program Eligibility	Ineligible	Eligible	Eligible
Colorado Childcare Assistance Program Eligibility	N/A	Eligible	Eligible

May 16, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Jenny Axmacher, Principal Planner
Clay Frickey, Interim Planning Manager
Brad Yatabe, Legal
Eric Potyondy, Legal

SUBJECT

First Reading of Ordinance No. 074, 2023, Amending the Land Use Code to Include Regulations for Making Water Adequacy Determinations.

EXECUTIVE SUMMARY

The purpose of this ordinance is to amend the Fort Collins Land Use Code to include water adequacy determinations for new development and redevelopment. The regulations are divided into three different categories: one for established potable water supply entities, one for new potable water supply entities, and one for non-potable water supply entities. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

Water is a crucial and constrained resource, and the City strives to ensure that development meets the community's vision and expectations for responsible resource management. City Plan includes policies to ensure water is used wisely and our community is prepared for a changing climate. Currently, development within the City only occurs within the boundaries of existing City (Fort Collins Utilities) and special district potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District. A project is determined to have an adequate water supply through the issuance of a "will serve" letter from the established potable water supply entity at the time of development plan or building permit approval.

The necessity for an updated water adequacy review program stems from the limited supply and high cost of water resources, which have resulted in developers pursuing more creative ways to provide both potable and non-potable water to their proposed developments, particularly projects striving to provide affordable housing or the denser development patterns called for in City Plan.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Relevant Past Council Discussions

- Water Adequacy Code Update – July 12, 2023
    - Work Session Summary: https://records.fcgov.com/CityCouncil/DocView.aspx?id=15514959&dbid=0&repo=FortCollins
- Northeast Fort Collins Planning and Projects Overview - August 31, 2021
    - Work Session Summary: https://records.fcgov.com/CityCouncil/DocView.aspx?id=15319767&dbid=0&repo=FortCollins
- Montava Development: Overview of Proposed Potable Water Supply Relying on Groundwater - February 9, 2021
    - Work Session Summary: https://records.fcgov.com/CityCouncil/DocView.aspx?id=13049288&dbid=0&repo=FortCollins
- Approval of Montava PUD Overlay and Master Plan - February 18, 2020
    - Agenda Item Summary: https://records.fcgov.com/CityCouncil/DocView.aspx?id=3487541&dbid=0&repo=FortCollins
- Northeast Fort Collins Planning and Projects Overview - September 24, 2019
    - Work Session Summary: https://records.fcgov.com/CityCouncil/DocView.aspx?id=3247255&dbid=0&repo=FortCollins
- Rural Scenario Assessment and reconfirmation of the Mountain Vista subarea framework plan - June 9, 2015.
    - Work Session Summary: https://records.fcgov.com/CityCouncil/DocView.aspx?id=3481555&dbid=0&repo=FortCollins

Background

Water is a crucial and constrained resource, and the City strives to ensure that development meets the community's vision and expectations for responsible resource management. City Plan includes policies to ensure water is used wisely and our community is prepared for a changing climate. The plan also supports managing water resources in a manner that enhances and protects long-term water quality, supply, and reliability for current and future residents.

The necessity for an updated water adequacy review program stems from the limited supply and high cost of water resources, which have resulted in developers pursuing more creative ways to provide potable and non-potable water to their proposed developments, particularly projects striving to provide affordable housing or the denser development patterns called for in City Plan. One development contemplating a more unique and potentially innovative approach to supplying water is the Montava Planned Unit Development (PUD), which proposes a groundwater-based water supply for both potable and non-potable water service. The developer believes this system will improve the overall resiliency of the water supply for the area while also reducing the cost.

Because the City does not currently have a review process or criteria for "non-standard" water service models, including groundwater systems, new policy and code are needed to confirm that future residents are adequately served and in a manner consistent with City policies. While the Montava PUD project has,

to some degree, generated the immediate need for this type of review, staff believes a comprehensive program could have benefits for reviewing all new developments moving forward, regardless of the water source.

Requirement for Water Adequacy Review

This review process is being proposed to further effectuate a Colorado state statute (Section 29-20-301, et seq., C.R.S.), which states:

> *A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.*

For this regulation, the Colorado state statute defines some key terms, including the following:

Adequate means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Water supply entity means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.

Currently, development within the City only occurs within the boundaries of existing City (Fort Collins Utilities) and special district potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District, and the adequacy determination is made through the issuance of a "will serve" letter from the established potable water supply entity. The City receives a will serve letter from the established potable water supply entity during the building permit process for the new development. A will serve letter states that the entity has the infrastructure and capacity to provide water service to the proposed development project and commits to providing that service.

Pursuant to state statute, "will serve" letters meeting certain requirements may satisfy the water adequacy determination for future developments to be served by these established potable water supply entities, but staff will soon be faced with the Montava PUD proposal that is outside the bounds of the current system and needs a more robust and transparent process to evaluate its more complex proposal. It is the responsibility of the City to ensure that future residents are well served by an adequate system.

Summary of Proposed Changes

The proposed Land Use Code changes may be found in Attachment 1, and include an amendment to Article Three, adding Division 3.13, and adding nine new definitions to Article Five, Section 5.1.2 Definitions. A summary of the proposed changes include:

1. **Article Three, Division 3.13 – Water Adequacy Determinations**

The proposed new division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S.

The subsequent sections outline the applicability, application, and procedures and standards for the three different review types:

- Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District.
- Other potable water supply entities, such as new private water suppliers or metro districts.
- Non-potable water supply entities, such as irrigation water supplied by metro districts.

Established Potable Water Supply Entities

For established potable water supply entities, the code provides options for compliance through review of water supply plans or letters from engineers detailing how the water supply system functions. Once an initial approval is completed, the process would move forward similarly to what the City does now with will serve letters.

Other Potable Water Supply Entities

A more detailed process is proposed for other potable water supply entities and the City has identified the following characteristics for evaluation criteria:

- Water Quality
- Quantity of Water
- Dependability of Supply and Supplier
  - Supply Resiliency
  - System Redundancy
  - Maintenance and Outages
- Availability of Supply
- Financial Sustainability of Supplier Capitalization

In general, the standards compare the new proposed system to the existing municipal utility.

Non-potable Water Supply Entities

The criterion for non-potable systems ensures the supply has enough quantity and quality to support the associated uses such as irrigation for landscape.

2. **Article Five, Division 5.1.2 – Definitions**

The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.

Those terms are:

- Adequate
- Established potable water supply entities
- Non-potable water
- Non-potable water supply
- Other potable water supply entities
- Potable water
- Water adequacy determination
- Water rights portfolio
- Water supply entity
- Water supply system

CITY COUNCIL DECISION POINTS

Based on the feedback received from Planning and Zoning Commission and other stakeholders, staff suggest Council consider the following three decision points. In all cases, staff is recommending no changes to the proposed code.

Decision Point 1 - Section 3.13.3 (A)

This section outlines the timeline for when the water adequacy determination is made during the development review process.

- For established potable water supply entities, the process would occur at final plan or basic development review but can be deferred to building permit as it occurs now.
- For other potable water supply entities, the process would occur at final plan or basic development review too but could be deferred to development construction permit. If the other potable water supply entity was planning to serve a development with an overall development plan or that is part of a planned unit development overlay, the project could be reviewed in its entirety with the first phase of development, subject to the provisions outlined in Section 3.13.5 (A)(8).
- New non-potable water supply entities would also be reviewed at final plan or basic development review, but could be deferred to development construction permit.

Alternatives

Move the determination timing for any or all the three entity types to earlier in the development review process such as at the project development plan.

- Move the determination timing for any or all the three entity types to later in the development review process such as at building permit.

Staff Analysis

Colorado state statute (Section 29-20-301, et seq., C.R.S.) states that a municipality can only make a water adequacy determination once unless the development is materially changed. Staff balanced the desire

from development stakeholders to complete the determination earlier in the development review processes with concerns about duplicated efforts from other regulatory agencies as well as staff desire to make the determination with enough information on the proposed development to make an accurate assessment.

Development projects can evolve and change through the process and by delaying the determination until later in the process, staff believe it can be made with more certainty. This does not mean, however, that staff is encouraging applicants to leave water decisions on development to the end of the process. Staff reminds applicants to work with their water supply entity early, and often, in the development review process and is adding language to conceptual review comment letters to further this point.

Decision Point 2 - Section 3.13.4 (A) (1)

Subsections (a) and (b) both require documents from the established potable water supply entities regarding their water supplies to be provided to City Council for information only.

Alternatives

- Remove this requirement from both subsections (a) and (b)
- Require a greater level of review for these documents such as a presentation before Council, or another City Board or Commission, during a meeting or work session.

Staff Analysis

This would be a new, high-level review of supply resource information for established potable water supply entities to provide prior to being able to continue with the typical process of submitting a will serve letter at the time of building permit. This step in the process was included based on feedback received from Council during the July 12, 2022, Water Adequacy work session that Council wanted additional information on the water supplies of existing potable water supply entities.

Feedback from established entities indicated that they do not want Council to approve any documents related to their special district and would prefer to not complete any type of review.

Decision Point 3 - Section 3.13.5(C)(5)(c)

This provision would require that if a new potable water supply entity is proposing to locate within the service area of an established potable supply entity, the new entity must either: (1) be excluded from the boundaries of the established potable supply entity; or (2) get consent from the established supply entity to operate within their service area. There is an exception provided for circumstances where the established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

Alternatives

- Remove this requirement from the code.
- Alter the code requirement.

Staff Analysis

This is the most contentious issue of the proposed code update, and staff do not believe an alternative exists that would resolve all stakeholder concerns. Staff based the proposed language, in part, on the following section of the municipal code:

> *Sec. 26-4. - Dual supply of water and wastewater service.*
>
> *If a property located within the City is in an area not supplied with both water and wastewater service from the City but is capable of receiving both water and wastewater service from the one (1) or more duly established quasi-municipal utility service districts, then the City shall not extend or provide either service to the property. The City may, however, extend either or both services to such property if the utility service district becomes incapable of providing a reasonable level of service to the property. Upon the review of the Water Board and the City administration, the City Council may waive any part or all of this Section.*
>
> *(Ord. No. 164, 1986, § 1(112-7), 11-4-86; Ord. No. 117, 1996, § 5, 9-17-96; Ord. No. 28, 1998, § 4, 3-17-98)*

Staff relied on this code language as evidence of a general policy direction the City has historically taken to respect the service areas of other established potable water supply entities. Staff believes this is a reasonable middle ground to respect establish potable water supply entities, as well as their investments and planning, and to allow for innovation. There are also existing laws that could require a new potable water supply entities to exclude from the service area of an established potable water supply entity regardless of the inclusion of Section 3.13.5(C)(5)(c), however staff believes that including the code provision provides greater transparency and eliminates confusion.

The code, as proposed, would require the new potable water supply entity to either exclude from the established entities' special district or seek consent from the established entity. There is an existing formal process to exclude property from a special district, roughly comparable to the de-annexation (or disconnection) process and that decision is appealable to the Board of County Commissioners and then District Court.

East Larimer County, Fort Collins Loveland, and West Fort Collins water districts have all expressed support for the inclusion of this code language and significant concern if the code provision is altered or removed.

The team representing the Montava Development has expressed significant opposition to the proposed code language in this section and Section 3.13.6.(A)(5) because they believe it would give an established potable water supply entity more authority than it would otherwise legally have over future development within the city. They have also argued that, if a new potable water supply entity is a private entity (as opposed to a governmental entity), they are not otherwise required to be excluded or get the consent for the established potable water supply entity.

Specific feedback and proposed redline changes from all parties are included in the packet.

CITY FINANCIAL IMPACTS

A Request for Proposal (RFP) will be issued shortly after the adoption of the Code for an on-call contractor to provide review services for water adequacy determinations of new other potable water supplies and new non-potable water supplies. Prior to the City reviewing any applications for these types of determinations,

the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

No new fees are proposed as part of the established water supply entity reviews as those are being done currently and the code language proposes to continue those reviews in a similar manner.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff met with the Water Commission on April 20 and the Planning and Zoning Commission on April 14 and April 26 for the public hearing on the proposed code update. During the Planning and Zoning Commission hearing on April 26, the Commission unanimously adopted the recommendation below:

> *The Planning and Zoning Commission recommend that City Council NOT ADOPT the proposed water adequacy determination code update in order to allow additional time to consider the impacts of the timing of the determination, and to allow staff to further study section 3.13.5C(5) to fully understand implications for both applicants and supplier, particularly for an applicant's ability to appeal the decision of a district.*

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

PUBLIC OUTREACH

This proposed Land Use Code change did not include specific public outreach meetings for the general public, however information on the code update was provided on the website, including an educational video. A press release on the update was also issued.

The specific water adequacy regulations were released to the public in the April 14, 2023, work session packet on April 7, 2023, and emailed directly to all established water supply entities, known stakeholders and interested parties on April 11, 2023. An updated draft was released on April 25, 2023, that incorporated changes based on feedback from the Planning and Zoning Commission work session, Water Commission meeting, stakeholder meetings and public feedback received between April 7 and April 24. This was the draft that the Planning and Zoning Commission recommendation was based on. The attached code draft incorporates further feedback from the aforementioned groups, including specific redlines received.

Staff met with representatives from the following groups to present the draft code updates as well to solicit feedback:

- West Fort Collins Water District
- East Larimer County Water District
- Fort Collins Loveland Water District
- Hartford Homes/Bloom
- HF2M/Montava
- Polestar Gardens/Polestar Village

Staff also received a call from the Sunset Water District expressing they did not have concerns about the update based on their perceived lack of development in their district boundary which they state is entirely in an unincorporated area. Save the Poudre also stated they had no concerns with the proposed update.

In general, the stakeholder feedback included an appreciation to discuss the proposed code and a better understanding of the intent after the meetings. The main point of contentions expressed included:

- Requirement for new potable supply entities to petition out of the boundaries of existing potable water supply entities or seek permission from the existing potable water supply entity. There was both support and concern over this concept.
- The disparity between review criteria for established and new potable water supply entities.
- The perception that the City was trying to regulate special districts through the review of a water supply plan or letter establishing the district's resources.
- A desire for more cooperation and consistency between all water suppliers.
- Concerns about duplicative review processes, especially for non-potable systems.
- Concerns over review costs
- Feedback that some metrics were vague.
- Feedback on the review timing proposed (FDP versus DCP) with a desire to complete the determination sooner.
- Feedback that there is a desire to be able to review new service for an entire development and then true up each phase at the time of final plan or BDR.
- Concerns on tight review timing for code update.

Written comments were received from many of the stakeholders outlined above and are included in the packet. Staff believes many of these concerns were addressed in the attached code draft.

Code Update Timing

As noted above, there were concerns about the limited review time for the update for outside parties. The timeline for the code update review process is being driven by a desire to have the code in place, or nearly in place, prior to a June status conference for a related water court case. The City (along with other parties) previously requested a stay in this case in order to get this process in place. The stay was requested around the same time (May 2022) that the City had an request for proposals (RFP) out to obtain a consultant to complete this code update work. The RFP did not result in the City finding a consultant to complete this work and so the project fell back to staff to complete, which was not anticipated as part of staff's workplan. While staff completed the initial draft for the code update late last summer (after the July work session) into the fall, competing priorities and resource limitations caused the outreach and detailed drafting work to be delayed over the late fall and winter.

Based on feedback from the Judge in the water court case in early March, priorities shifted to complete this work and this was the schedule that made it possible to complete this task in that timeframe. While the timeline was compressed, staff was able to meet with all stakeholders who requested a meeting and discussed the code update with all established water supply entities within the City's GMA.

Staff is also committed to re-evaluating this code, with our stakeholders, as part of the Land Use Code Phase 2 update which will hopefully kick off sometime this fall.

ATTACHMENTS

1. Ordinance for Consideration
2. Redlined Code Language Comparison
3. Best Practices from Other Jurisdictions
4. Public Comments
5. Planning and Zoning Meeting Minutes, April 26, 2023 (excerpt)
6. Presentation

ORDINANCE NO. 074, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE LAND USE CODE TO INCLUDE REGULATIONS FOR
MAKING WATER ADEQUACY DETERMINATIONS

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, pursuant to Colorado Revised Statutes ("C.R.S.") Section 29-20-301, et seq., the City may not approve an application for a development permit until the City has determined that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate; and

WHEREAS, water is an increasingly scarce resource and ensuring that a proposed development will have an adequate water supply is essential to protecting public health, safety, and welfare, and ensuring that growth and development within the City is sustainable; and

WHEREAS, the City wishes to update and formalize its water adequacy determination process by adopting the procedure and standards set forth in this Ordinance; and

WHEREAS, on April 26, 2023, the Planning and Zoning Commission unanimously recommended that City Council not adopt the proposed water adequacy determination Land Use Code Changes to allow more time for consideration of the impacts of the timing of the determination, the implications of Section 3.13.5(C)(5) for applicants and water suppliers, in particular regarding the ability of an applicant to appeal the decision of a water supplier; and

WHEREAS, City Council finds that the water adequacy determination provisions set forth in this Ordinance are in the best interests of the City of Fort Collins.

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 Section 3.7.3 of the Land Use Code is hereby amended by the addition of a new Subsection (G) which reads in its entirety as follows:

3.7.3 - Adequate Public Facilities

. . .

(G) ***Water Supply Adequacy*.** The determination required by C.R.S. § 29-20-301, et seq., whether the proposed water supply for development is adequate and is not addressed in this Section but is set forth in Division 3.13.

Section 3. That the Land Use Code is hereby amended by the addition of a new Division 3.13 which reads in its entirety as follows:

Division 3.13 - Water Adequacy Determinations

Section 3.13.1 Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to C.R.S. § 29-20-301, et seq. The specific purposes are to:

(1) Fulfill the C.R.S. § 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.";

(2) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;

(3) Ensure that growth and development in the City occur in a planned and coordinated manner;

(4) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;

(5) Promote safe, efficient, and economic use of public resources in developing and providing water; and

(6) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.13.2 Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal

boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

(1) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements if the term of use is three (3) consecutive years or less and identified as such on an approved landscape plan.

(2) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

Section 3.13.3 Application.

(A) ***Application Timing.*** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to the following:

(1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.

(2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.

(B) ***Separate Applications.*** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems unless the Director determines that a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.

(C) ***Material Changes***. The City shall make a determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the

portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(D) ***Application After Director Denial.*** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, that addresses the stated reason or reasons for denial.

Section 3.13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) ***Application Requirements.***

(1) Requests under this Section shall include a letter as described in Subsection (a), unless exempted pursuant to Subsection (b).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity that contains the following information:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;

2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions;

4. Water conservation and/or water demand management measures, if any, that may be implemented within the proposed development;

5. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions;

6. An affidavit signed by the entity manager attesting that to the best of their knowledge, the entity is in compliance with all applicable regulations; and

7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

All letters shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3.13.3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

(b) The letter described in Subsection (a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;

2. Has a minimum twenty-year planning horizon;

3. Lists the water conservation measures, if any, that may be implemented within the service area;

4. Lists the water demand management measures, if any, that may be implemented within the development or service area;

5. Includes a general description of the established potable water supply entity's water obligations, such as a general description of customer demands and operational water delivery obligations, such as augmentation requirements and return flow obligations;

6. Includes a general description of the established potable water supply entity's water supply system and water rights portfolio; and

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations.

All water supply plans, or other plans that cumulatively provide the information required above shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

(2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:

(a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;

(b) Stating its ability to provide an adequate water supply for the proposed development;

(c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and

(d) Providing the length of time the letter is valid for should the proposed development not occur immediately.

(B) ***Review of Application***. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) ***Standards.*** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.

(D) ***Decision.***

(1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:

(a) Approve the application finding that the proposed water supply is adequate;

(b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or

(c) Deny the application finding that the proposed water supply is inadequate.

(2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.

(3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section. No building permit may be issued until all conditions have been met.

(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) ***Application Requirements for Other Potable Water Supply Entities.*** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:

(1) A summary document linking the information to the standard of review.

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer or water supply expert;

(c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, homeowners' or property owners' association, or other taxes or fees that are also uniquely applicable to the proposed development to be served by the other potable water supply entity.

(5) Approval documentation from other regulatory agencies such as CDPHE. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.

(6) Detailed process diagrams stamped by a registered professional engineer on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Subsection 3.13.4(A)(2); or as required based on any material changes to:

(a) Any of the requirements set forth in this Section;

(b) The reported water supply as set forth in Section 3.13.3(C); or

(c) The proposed development, as determined by the Director.

(B) ***Review of Application.***

(1) *Agreement on Costs.* Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) *Review.*

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in Subsection 3.13.5(B)(1). The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.

(C) ***Standards.*** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

(1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;

(b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and

(c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

(2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;

(b) Having ability to acquire a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and

(3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

(4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;

(b) If the water supply system includes a water treatment facility, include the class of facility and treatment processes and provide information that the level of operations is equivalent or better as required by CDPHE, and demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;

(c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies,

including infrastructure issues, natural disasters, and long-term climate change; and

(d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.

(5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;

(b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and

(c) For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

(D) ***Modification of Standards.*** If a potable water supply entity cannot meet the standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H) for granting a modification, the Director may also grant a modification if such modification would not be detrimental to the public good and the standard as modified is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) ***Decision.***

(1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:

(a) Approve the application finding that the proposed water supply is adequate;

(b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or

(c) Deny the application finding that the proposed water supply is inadequate.

(2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.

(3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure for the water supply system. No building permit may be issued until all conditions have been met.

(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for the development is being provided by the approved entity.

Section 3.13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) ***Application Requirements for Non-Potable Water Supplies.*** Applications for a water adequacy determination for all or portions of a development to be served with non-potable water shall include all of the following:

(1) Summary document linking the information to the standard of review.

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;

(c) A description of all elements of the water rights portfolio either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year, including any augmentation requirements;

(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the Land Use Code.

(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

(5) Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system when applicable. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section.

(6) Such other information as may be required by the Director.

(B) ***Review of Application.***

(1) *Agreement on Costs*. Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) *Review*.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in Subsection 3.13.6(B)(1). The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) ***Standards.*** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

(1) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) Relying upon a renewable and/or sustainable physical supply of water;

(b) Having a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations,

including augmentation requirements and return flow obligations; and

(c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

(3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and

(b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

(a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and

(b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) ***Decision.***

(1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:

(a) Approve the application finding that the proposed water supply is adequate;

(b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or

(c) Deny the application finding that the proposed water supply is inadequate.

(2) The written determination shall be included in the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system. No building permit may be issued until all conditions have been met.

(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 4. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of the following ten definitions which read in their entirety as follows:

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established potable water supply entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

Non-potable water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-potable water supply entities shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

Other potable water supply entities shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

Potable water shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water adequacy determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that supplies, distributes, or otherwise provides water at retail.

Water rights portfolio shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

Introduced, considered favorably on first reading and ordered published this 16th day of May, 2023, and to be presented for final passage on the 6th day of June, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 6th day of June, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Amend Section 3.7.3, Adequate Public Facilities

Add Subsection (G):

(G) **Water Supply Adequacy.** The determination required by Section 29-20-301, et seq., C.R.S., whether the proposed water supply for development is adequate is not addressed in this Section but is set forth in Division 3.~~12~~ 13.

Division 3.13 - Water Adequacy Determinations

Section 3.~~12~~13.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

(A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.~~.~~";
(B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
(C) Ensure that growth and development in the City occur in a planned and coordinated manner;
(D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
(E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
(F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.~~12~~13.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

(A) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements if the term of use is three consecutive years or less and identified as such on an approved landscape plan.
(B) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

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Section 3.~~12~~13.3 Application.

(A) **Application Timing.** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to ~~any of~~ the following:

(1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6~~);~~) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.

(2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity~~; or~~ and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.

~~(3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.~~

(B) **Separate Applications.** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems~~. The Director shall have the discretion to determine whether separate applications are required.~~ unless the Director determines that a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.

(C) **Material Changes**. The City shall make a ~~Water Adequacy Determination~~determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought ~~-~~are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(D) **Application After Director Denial.** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, that addresses the stated reason or reasons for denial.

Section 3.~~12~~13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

~~(1) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director.~~ ~~Such requests shall include the following:~~

~~(1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and~~

~~(2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.~~

~~(3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.~~

~~(2)~~(1) Requests under this Section shall ~~also~~ include a letter as described in Subsection (~~1~~a), unless exempted pursuant to Subsection ~~((2) or (3), or both~~(b).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity ~~stating~~that contains the following information:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions ~~including long term variability and future climate risk~~;
4. ~~4.~~ Water conservation ~~measures, if any, that may be implemented within the proposed development;~~
5. ~~5.~~4. and, or water demand management measures, if any, that may be implemented ~~to address hydrologic variations~~within the proposed development;
6. ~~6.~~5. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development ~~in all~~under various hydrologic conditions; ~~and~~
6. An affidavit signed by the entity manager attesting that to the best of their knowledge the entity in compliance with all applicable regulations; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

All letters shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services

Department. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once and updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3.13.3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

~~(1) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.~~

(b) The letter described in Subsection (~~1~~a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
5. Includes a general description of the established potable water supply entity's water obligations~~;~~, such as a general description of customer demands and operational water delivery obligations, such as augmentation requirements and return flow obligations;
6. Includes a general description of the established potable water supply entity's water ~~supplies;~~supply system and water rights portfolio; and
7. Includes an ~~estimate of~~ affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations.

~~7.~~ All water supply ~~requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and~~

~~Has been reviewed by~~ plans, or other plans that cumulatively provide the information required above shall be provided to City Council ~~and is~~for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council ~~review requirement~~with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

(2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:

(a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;

(b) Stating its ability to provide an adequate water supply for the proposed development;

(c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and

(d) Providing the length of time the letter is valid for should the proposed development not occur immediately.

(B) **Review of Application**. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Standards.** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.

~~To~~ **Decision.** ~~issue a Water Adequacy Determination under this section, the Director must find that:~~

~~(D)~~ ~~The statements in~~

(1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:

(a) Approve the application ~~and associated materials~~finding that the proposed water supply is adequate;

~~(a)~~(b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are ~~complete, correct, and reliable; and~~met; or

~~(1) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.~~

(c) Deny the application finding that the proposed water supply is inadequate.

(2) All water adequacy determinations ~~**Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions~~ shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.

(3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section. No building permit may be issued until all conditions have been met.

~~(1)~~(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.~~12~~13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:

(1) A summary document linking the information to the standard of review.

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

~~(1) ; and~~

~~(2)(1) Report including information required under Section 29-20-304(1), C.R.S.:~~

~~(a) An estimate of the water supply requirements for the proposed development through build-out conditions;~~

~~(a)~~(b) A description of the established potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer or water supply expert;

~~(b)~~(c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;

~~(c)~~(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

~~(d) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;~~

(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

~~(2)~~(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

~~(3)~~(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development to be served by the other potable water supply entity.

~~(2)~~ Approval documentation from other regulatory agencies such as CDPHE.

(5) ~~Detailed~~ At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.

~~(4)~~(6) Detailed process diagrams stamped by a registered professional engineer on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Section 3.13.4.(A) (2); or as required based on any material changes to:

(a) Any of the requirements set forth in this Section;

(b) The reported water supply as set forth in Section 3.13.3(C); or

(c) The proposed development, as determined by the Director.

~~8.~~1.~~Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.~~

(B) **Review of Application.**

(1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review**.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.~~12.3.~~

~~(C)~~ **Standards.**

~~(D)~~(C) To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

(1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;

(b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects~~.~~; and

(c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

(2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;

(b) Having ability to acquire ~~the~~a water rights ~~or water contracts~~portfolio that ~~provide~~provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and

(3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

(4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;

(b) If the water supply system includes a water treatment facility, include the class of facility and treatment processes and provide information that the level of operations is equivalent or better as required by CDPHE, and demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products~~.~~;

(c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and

(d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.

(5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;

(b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and

(c) For lands within the water service area of an established ~~Water Provider~~potable water supply entity, establishing that~~:~~ the lands to be served by the other potable water supply entities have been removed from the water service area of ~~an~~the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

~~(E)~~(D) **Modification of Standards.** If a potable water supply entity cannot meet the ~~Fort Collins Utility~~ standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H~~),~~) for granting a modification, the Director ~~must find that~~ may also grant a modification if such modification would not be detrimental to the public good and the standard as modified ~~standard~~ is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

~~(F)~~(E) **Decision.**

(1) ~~The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the~~ Based upon the information provided by the applicant and developed by the City and any consultants~~.~~, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:

(a) Approve the application finding that the proposed water supply is adequate;

(b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or

(c) Deny the application finding that the proposed water supply is inadequate.

~~(1)~~(2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed ~~to review the~~ upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.

~~(2)~~(3) The Director ~~shall make Water Adequacy Determinations, conditional approvals, and denials~~may impose conditions of ~~Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved.~~ approval that when met, as determined by the Director ~~shall be entitled to make a Water Adequacy Determinations conditioned upon the~~, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant~~: acquiring~~ acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure

for the water supply system. No building permit may be issued until all conditions have been met.

~~(3)~~(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

~~(4)~~(5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for ~~this~~the development is being provided by the approved entity.

Section 3.~~12~~13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

~~(B)~~(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a water adequacy determination for all or portions of a development to be served with ~~untreated~~non-potable water shall include all of the following:

(1) Summary document linking the information to the standard of review.

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

~~(1) ; and~~

~~(5)(1) Report including information required under Section 29-20-304(1), C.R.S.:~~

~~(g)~~(a) ~~An estimate of the water supply requirements for the proposed development through build-out conditions;~~

(b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;

(c) A description of all elements of the water rights portfolio either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year ~~based on~~including any augmentation requirements;

~~(e) Water conservation measures, if any, that may be implemented within the development;~~

~~(f)~~(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

~~(g)~~(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the ~~development code;~~ Land Use Code.

~~(2)~~(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

~~(3)~~(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

~~(4)~~(5) Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system~~.~~ when applicable. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section.

~~(5)~~(6) Such other information as may be required by the Director.

~~(C)~~(B) **Review of Application.**

(1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

~~(D)~~ **Standards**

~~(E)~~(C) . To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

~~(1)~~ The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by~~:~~

~~(2)~~(1) providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

~~(3)~~(2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) Relying upon a renewable and/or sustainable physical supply of water;

(b) Having a water rights ~~or water contracts~~portfolio that ~~provide~~provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) ~~in all~~under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and

(c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand ~~in all~~under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

~~(4)~~(3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and

(b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

~~(5)~~(4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

(a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and

(b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

~~(F)~~(D) **Decision.**

(1) ~~The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on~~Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:

(a) Approve the application finding that the proposed water supply is adequate;

(b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or

(c) Deny the application finding that the proposed water supply is inadequate.

~~(1)~~(2) The written determination shall be included in the plan set for the associated development application, if approved. ~~.~~ The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

~~(2)~~(3) The Director ~~shall make Water Adequacy Determinations, conditional approvals, and denials~~may impose conditions of ~~Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved.~~approval that when met, as determined by the Director ~~shall be entitled to make a Water Adequacy Determinations conditioned upon~~, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant ~~acquiring~~acquire the required water

right decrees and water contracts for the water ~~rights~~supply system. No building permit may be issued until all conditions have been met.

~~(3)~~(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed~~,~~ and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established potable water supply entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

Non-potable water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-potable water supply entities shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

Other potable water supply entities shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

Potable water~~,~~ shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water adequacy determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that~~, at the time of the application, or within three years of application,~~ supplies, distributes, or otherwise provides water at retail.

Water rights portfolio shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

DRAFT

Best Practices from Other Jurisdictions

Staff conducted research on how other jurisdictions handle the water adequacy review process. A summary of the information collected is below. It is worth noting that many municipalities have not been faced with the challenge of regulating a private water supply system. This is an innovative/novel idea and there is not much basis to find comparisons. Most municipalities have their own municipal service or obtain service through one or more special districts. It is more likely a situation that a county jurisdiction might experience. The leader in code creation on the topic is La Plata County, with additional work being done in El Paso County.

Jurisdiction	Water Provider	Mechanism	Timing
Fort Collins	Municipal Utility w/water plan and Special Districts with water plans	Will Serve Letters	Building Permit
Windsor	Special Districts w/ water plan	Code Requirements	Building Permit
Loveland	Municipal Utility w/water plan		Building Permit
Denver	Denver Water (Special District) w/water plan		
Lakewood	Municipal Utility w/water plan and Special Districts with water plans	Water Service Form	Building Permit
Littleton	Denver Water (Special District) w/water plan	Will Serve Letters	Up to Building Permit
Thornton	Municipal Utility w/water plan	Will Serve Letters	Up to Building Permit
Commerce City	Special District w/ water plan	Will Serve Letters	Building Permit
Westminster	Municipal utility w/water plan		
Colorado Springs			
Larimer County	Special Districts		
El Paso County			
La Plata County	Has requirements for New Entities	Code Requirements	
Greeley			
Timnath	Special Districts w/ water plan		
Boulder			
Arvada	Municipal Utility w/water plan and Special Districts with water plans		

Written Comment from Stakeholders

From: Sandra Bratlie
To: Jenny Axmacher; Eric Potyondy
Cc: Clay Frickey; Scott E. Holwick; Chris Pletcher - Contact
Subject: [EXTERNAL] RE: City of Fort Collins Water Adequacy Determination Review Code Updates
Date: Wednesday, May 10, 2023 11:12:35 AM
Attachments: image001.png
image002.png

Jenny,

The redlines are not showing again on this version. We did have one additional minor request in Section 3.13.4 (A) (1) (b) 7 on page 4

Change from:

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations.

to:

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with state and federal primary drinking water regulations.

Thanks!

Sandra Bratlie, P.E.
District Engineer | **FCLWD**

OFFICE: 970.226.3104 x 106
MOBILE: 970.786.5273
sbratlie@fclwd.com

From: Jenny Axmacher <jaxmacher@fcgov.com>
Sent: Wednesday, May 10, 2023 11:02 AM
To: Sandra Bratlie <SBratlie@fclwd.com>; Eric Potyondy <epotyondy@fcgov.com>
Cc: Clay Frickey <cfrickey@fcgov.com>; Scott E. Holwick <SHolwick@lyonsgaddis.com>; Chris Pletcher <cpletcher@fclwd.com>
Subject: RE: City of Fort Collins Water Adequacy Determination Review Code Updates

CAUTION: Sent by an external sender. Do not open attachments, click web links, or reply unless you have verified this email is legitimate.

Additional changes were made to the proposed code based on feedback and they are highlighted in the attached document. This is the version of the code that will be in the Council Packet for next week's hearing.

Bushong & Holleman PC

A t t o r n e y s · a t · L a w

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May 9, 2023

Sent via Email: jaxmacher@fcgov.com; epotyondy@fcgov.com
Jenny Axmacher, Principal Planner
Eric Potyondi, Assistant City Attorney
City of Fort Collins, CO

Re: Water Adequacy Code Revisions

Dear Jenny and Eric,

This letter is on behalf of the Montava entities. While we greatly appreciate the changes made so far to the water adequacy code, we are requesting that the red-lined changes in the attached document also be made. In addition to the brief explanations in the attached, please accept the following further explanation for the suggested changes.

1. For Northeast Fort Collins to develop consistent with the City's vision, with affordable housing and neighborhood communities, more economical and reliable water supply solutions are needed. Buying and dedicating CBT and WSSC shares to ELCO works better for small rural developments than for urban growth. The water adequacy code should not deprive the City or Montava of future water supplies that may be essential for the intended growth. To address this issue, we suggest the following:

> 3.13.5(C)(5)(c). This suggested edit (adding: "if otherwise required by Colorado law") simply protects legal rights that exist to provide an alternative water solution. The code should not inadvertently deprive future developments of such rights by granting districts veto power over alternative water supplies if such authority does not exist. For example, where a statute or court order authorizes a private water solution within an established district, the suggested edit ensures the code does not usurp that authority by still requiring the district's consent or exclusion.
>
> 3.13.6(A)(5). These suggested edits accomplish two things. First, similar to the above concern, it protects legal rights that exist under Colorado law to provide an alternative nonpotable water solution. Second, it retains the City's discretion to waive the requirement if the established district "is incapable of providing a reasonable level of service." The City currently has that authority at Code 26-4 and should not waive it in

these amendments. The City added similar language to the potable service provision (3.13.5(C)(5)(c)) and the same should apply to non-potable service.

2. "Other potable water supply entities" will be critical in developing new water supplies for the City within established districts. Thus, it is important that the code allows for and encourages a fair assessment of such new water supplies.

3.13.5(A)(4). This provision assesses the costs of the other potable water supply entities and includes in those costs any fees for metro districts or HOAs associated with the development. However, HOAs or metro districts exist for many developments and are not unique to other potable water supply entities. To ensure a fair assessment of costs of the other potable water supply entities, the costs of HOAs or metro districts should only be added to the extent they are uniquely applicable to the water service being provided by the other potable water supply entity.

Multiple code provisions. In numerous places within the code "other potable water supply entities" and "non-potable water supply entities" must model a one-in-fifty year drought. Although it is unclear why "established potable water supply entities" are not held to the same standard, our suggestion is to add "or equivalent standard" for each reference. For example, Montava used an even more robust modeling assumption to assess drought resiliency and, generally speaking, the method used will depend on the available data. The code should not preclude such modeling.

3.13.6(A)(2)(d). This paragraph presumes groundwater supplies will have augmentation requirements which is not always the case (e.g. Coffin Wells do not require augmentation and are prevalent in Northeast Fort Collins). We have suggested a minor clarifying change.

Thank you for considering the attached redlined changes and the associated explanations. If this raises any questions, please do not hesitate to contact us.

Very truly yours,

BUSHONG & HOLLEMAN PC



Steve Bushong

Encl.
cc: Max Moss
Dick Wolfe, P.E.
Calvin Miller, Ph.D.

DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

Amend Section 3.7.3, Adequate Public Facilities

Add Subsection (G):

(G) **Water Supply Adequacy.** The determination required by Section 29-20-301, et seq., C.R.S., whether the proposed water supply for development is adequate is not addressed in this Section but is set forth in Division 3.13.

Division 3.13 - **Water Adequacy Determinations**

Section 3.13.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

(A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.";
(B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
(C) Ensure that growth and development in the City occur in a planned and coordinated manner;
(D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
(E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
(F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.13.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

(A) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements if the term of use is three consecutive years or less and identified as such on an approved landscape plan.
(B) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

Section 3.13.3 Application.

(A) **Application Timing.** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to the following:

(1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.

(2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.

(B) **Separate Applications.** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems unless the Director determines that a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.

(C) **Material Changes**. The City shall make a determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(D) **Application After Director Denial.** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, that addresses the stated reason or reasons for denial.

Section 3.13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

(1) Requests under this Section shall include a letter as described in Subsection (a), unless exempted pursuant to Subsection (b).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity that contains the following information:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions;
4. Water conservation and, or water demand management measures, if any, that may be implemented within the proposed development;
5. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions;
6. An affidavit signed by the entity manager attesting that to the best of their knowledge the entity in compliance with all applicable regulations; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

All letters shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once and updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

(b) The letter described in Subsection (a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
5. Includes a general description of the established potable water supply entity's water obligations, such as a general description of customer demands and operational water delivery obligations, such as augmentation requirements and return flow obligations;
6. Includes a general description of the established potable water supply entity's water supply system and water rights portfolio; and

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations.

All water supply plans, or other plans that cumulatively provide the information required above shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

(2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:
   (a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;
   (b) Stating its ability to provide an adequate water supply for the proposed development;
   (c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and
   (d) Providing the length of time the letter is valid for should the proposed development not occur immediately.

(B) **Review of Application**. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Standards.** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.

(D) **Decision.**
   (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:
      (a) Approve the application finding that the proposed water supply is adequate;
      (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
      (c) Deny the application finding that the proposed water supply is inadequate.
   (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.
   (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards

set forth in this Section. No building permit may be issued until all conditions have been met.

(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:

(1) A summary document linking the information to the standard of review.

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the established potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;

(c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees to the extent ~~that are also~~ uniquely applicable to providing the proposed water service ~~development to be served~~ by the other potable water supply entity.

(5) Approval documentation from other regulatory agencies such as CDPHE. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.

(6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

Commented [A1]: An HOA or metro district may exist regardless of who supplies water. Since the purpose of this provision is to assess true costs of the other potable water supply entities, this should apply only to HOAs or metro districts to the extent uniquely applicable to the water service provided by the other potable water supply entity.

(8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Section 3.13.4.(A) (2); or as required based on any material changes to:

(a) Any of the requirements set forth in this Section;

(b) The reported water supply as set forth in Section 3(C); or

(c) The proposed development, as determined by the Director.

(B) **Review of Application.**

(1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review**.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.

(C) **Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

(1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;

(b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and

(c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

(2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;

(b) Having ability to acquire a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and

(3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

(4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;

(b) If the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;

(c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and

(d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.

(5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;

(b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and

(c) For lands within the water service area of an established potable water supply entity, and if otherwise required by Colorado law, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

(D) **Modification of Standards.** If a potable water supply entity cannot meet the standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to

Commented [A2]: What is examined or modeled will depend upon the best available data. The City should be open to equivalent or more rigorous ways to assess drought resiliency.

Commented [A3]: This is similar to both ELCO's and Montava's prior suggestions. This paragraph should not usurp Colorado law. Montava desires to retain available legal rights to provide a private water solution.

The City should not pick winners and losers by inadvertently precluding legal options.

modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H) for granting a modification, the Director may also grant a modification if such modification would not be detrimental to the public good and the standard as modified is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

(1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
   (a) Approve the application finding that the proposed water supply is adequate;
   (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
   (c) Deny the application finding that the proposed water supply is inadequate.

(2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.

(3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure for the water supply system. No building permit may be issued until all conditions have been met.

(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for the development is being provided by the approved entity.

Section 3.13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a water adequacy determination for all or portions of a development to be served with non-potable water shall include all of the following:

(1) Summary document linking the information to the standard of review.

(2) Report including information required under Section 29-20-304(1), C.R.S.:
   (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
   (b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include

water quality test results and results of an analysis investigating any limitations of use due to poor quality;

(c) A description of all elements of the water rights portfolio either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year including any~~based on~~ augmentation requirements;

(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the Land Use Code.

(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

(5) Approval documentation from other necessary regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system if otherwise required by law. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

(6) Such other information as may be required by the Director.

(B) **Review of Application.**

(1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

Commented [A4]: Not all groundwater supplies require augmentation. Coffin wells exist in Northeast Fort Collins and require no augmentation.

Commented [A5]: The changes to this paragraph are based upon similar concerns expressed above at paragraph 3.13.5(C)(5)(c). This last proposed sentence retains the City's current authority under the code to assess reasonableness of the established district's service and is identical to the last sentence already in 3.13.5(C)(5)(c).

(c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) **Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

(1) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) Relying upon a renewable and/or sustainable physical supply of water;

(b) Having a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and

(c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

(3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and

(b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

(a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and

(b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) **Decision.**

(1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:

(a) Approve the application finding that the proposed water supply is adequate;

(b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or

(c) Deny the application finding that the proposed water supply is inadequate.

(2) The written determination shall be included in the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system. No building permit may be issued until all conditions have been met.

(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established potable water supply entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

Non-potable water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-potable water supply entities shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

Other potable water supply entities shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

Potable water shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water adequacy determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that supplies, distributes, or otherwise provides water at retail.

Water rights portfolio shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

DRAFT

From: Mike Scheid
To: Jenny Axmacher; Eric Potyondy
Cc: "Tim Goddard"; "Brad Grasmick"; "Richard Raines"
Subject: [EXTERNAL] RE: RE: Word Doc- water adequacy
Date: Tuesday, May 9, 2023 3:40:51 PM

Jenny & Eric,

ELCO asks that you consider the following change to section 3.13.5(C)(5)(c) in the proposed redline language provided on 5/3/23:

Change the last sentence of 3.13.5(C)(5)(c), which currently reads:
"The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development."

To Read:
"The Director may, however, waive this requirement if the applicant shows the established potable water supply entity is incapable of providing a level of service for the proposed development that is reasonably similar to the level of service it has historically provided to other developments."

Please let us know if you would like to discuss this proposed change.

Thanks,

Mike Scheid
ELCO Water District
232 South Link Lane
Fort Collins, CO 80524
(970) 493-2044

From: Jenny Axmacher <jaxmacher@fcgov.com>
Sent: Wednesday, May 3, 2023 3:09 PM
To: Mike Scheid <mikes@elcowater.org>; Eric Potyondy <epotyondy@fcgov.com>
Cc: Tim Goddard <timg@hfglawfirm.com>; 'Brad Grasmick' <brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>
Subject: RE: RE: Word Doc- water adequacy

There is an issue with the redline file so I'm resending it.

Jenny Axmacher, AICP
Pronouns: she/her
Principal Planner

City of Fort Collins

From: Jenny Axmacher
Sent: Wednesday, May 3, 2023 2:04 PM
To: Mike Scheid <mikes@elcowater.org>; Eric Potyondy <epotyondy@fcgov.com>
Cc: Tim Goddard <TimG@hfglawfirm.com>; 'Brad Grasmick' <Brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>
Subject: RE: [EXTERNAL] RE: Word Doc- water adequacy

Hi Mike,
Here is the draft code that will be in the City Council packet as well as a redline copy. I can include any additional public comment on the draft if it gets to me before 5/10.

Please let me know if you have any questions.
Sincerely,

. . . . . .
Jenny Axmacher, AICP
Pronouns: she/her
Principal Planner
City of Fort Collins

From: Jenny Axmacher
Sent: Tuesday, April 25, 2023 1:36 PM
To: Mike Scheid <mikes@elcowater.org>; Eric Potyondy <epotyondy@fcgov.com>
Cc: Tim Goddard <TimG@hfglawfirm.com>; 'Brad Grasmick' <Brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>
Subject: RE: [EXTERNAL] RE: Word Doc- water adequacy

Hi Mike,
Thank you for your feedback. Here's the updated draft and a redline copy. We'll continue to incorporate feedback as we prepare for the Council Packet deadline next week.

Sincerely,

. . . . . .
Jenny Axmacher, AICP
Pronouns: she/her
Principal Planner
City of Fort Collins

From: Mike Scheid <mikes@elcowater.org>
Sent: Friday, April 21, 2023 3:15 PM
To: Jenny Axmacher <jaxmacher@fcgov.com>; Eric Potyondy <epotyondy@fcgov.com>
Cc: Tim Goddard <TimG@hfglawfirm.com>; 'Brad Grasmick' <Brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>
Subject: [EXTERNAL] RE: Word Doc- water adequacy

Jenny & Eric,

Included with this email is a word version of the City's proposed Water Adequacy Determination language with some ELCO suggested redline changes as well as comments. Some of the comments provide suggestions while others are in the form of questions. The comments that are in the form of questions are not necessarily intended to be requested revisions to the language but rather are issues that ELCO staff believes will need to be resolved as the process is developed.

Let me know if we need to discuss or answer any questions you may have.

Mike Scheid
ELCO Water District
232 South Link Lane
Fort Collins, CO 80524
(970) 493-2044

From: Jenny Axmacher <jaxmacher@fcgov.com>
Sent: Tuesday, April 18, 2023 2:57 PM
To: Mike Scheid <mikes@elcowater.org>
Subject: Word Doc- water adequacy

Here you go!

. . . . . .
Jenny Axmacher, AICP
Pronouns: she/her
Principal Planner
Community Development & Neighborhood Services
City of Fort Collins
281 N. College Ave.
970-416-8089 office
jaxmacher@fcgov.com

Fort Collins City Council
300 LaPorte Avenue
Fort Collins, CO 80521

Re: Water Adequacy Determination

The East Larimer County Water District ("ELCO") submits this letter as a supplement to its prior letter that was submitted to the Planning and Zoning Commission on April 26, 2023. This supplement addresses the question that was presented by the Planning Commission as to what appeal rights does an owner have if the board of directors of a special district, such as ELCO, denies an owner's request to be excluded from the service area of the special district.

When the process is understood, it becomes evident that the decision-making process is both fair and comports fully with general due process principles. It is not an autocratic process that leaves an owner without an adequate remedy. The procedure is similar to an appeal of a decision of the City Planning Commission to the Fort Collins City Council and then the Larimer County District Court.

The multiple levels of appeal assure that the final decision made will not be arbitrary or subject to bias. Further, the county board of commissioners can override a denial by the board of the special district, and the district court can override a denial by the county board of commissioners. To the extent any member of the Planning Commission was left with a misunderstanding of the appeal process, ELCO apologizes for not being able to fully explain the process at the hearing before the Planning Commission.

To provide context to this supplement, the proposed amendment (the "Amendment") to the Land Use Code to add Division 3.13—Water Adequacy Determination includes the following provision, §3.13.5(C)(5)(c), which ELCO strongly supports:

> For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

In its prior letter, ELCO explained how this requirement serves the same public purpose as § 32-1-107, C.R.S. does with regards to preventing overlapping water service entities. To be clear, §3.13.5(C)(5)(c) simply mimics the statutory restriction that § 32-1-107 would impose on a potable water supply entity that is a metropolitan district or a special district. No metropolitan district or special district can provide water service within the service area of an existing water district without the consent of the existing water district. Section §3.13.5(C)(5)(c) then extends this

South Link Lane, P.O. Box 2044 • Fort Collins, Colorado 80522 • Phone (970) 493-2044 • Fax (970) 493-1801

requirement to any potable water supply entity, regardless of the particular form of the entity. As explained in ELCO's prior letter, permitting a new potable water supply entity to operate within the service area of an existing water district may create substantial harm to the water district and the customers that rely on the water district for potable water service.

ELCO explained in its prior letter the important role that §3.13.5(C)(5)(c) will provide to assure that ELCO and other potable water service providers have performed the detailed and important analysis and findings required by § 32-1-501, C.R.S, before any decision is made to exclude land from the service area of the water district. Because a request for exclusion by an owner would not be required if the water district consented to overlapping water service, the supplement will focus on the procedure for a request for exclusion filed by the owner of the land sought to be excluded. Section 32-1-502 provides a separate procedure that allows the governing body of any municipality wherein territory within a special district is located, the board of any special district with territory within the boundaries of any municipality, or fifty percent of the fee owners of real property in an area of any municipality in which territory within a special district is located to petition the district court for exclusion of the territory described in the petition. This supplement will not address that process other than to note a different procedure is provided for that exclusion process. ELCO will not prematurely comment on any request that may come before the ELCO Board of Directors in the future, other than to explain the process that it will follow.

Petition Requesting Exclusion

The process begins with the fee owner or owners of one hundred percent of the property sought to be excluded filing a petition with the board of directors requesting that the property be excluded from the special district. The petition must provide the legal description of the property, must contain a notarized statement that the fee owner or owners consent to the exclusion of the property from the special district and provide a deposit of money sufficient to pay all costs of the exclusion proceedings.

After receiving the petition, the board of directors must provide notice of a public meeting to hear the petition. The notice must be published and state the place, time and date of the meeting, the names and addresses of the petitioners, if applicable, a general description of the area proposed for exclusion, and notice that all persons interested shall appear at the designated time and place and show cause in writing why the petition should not be granted or a resolution to approve the petition should not be finally adopted. The failure of any person in the district to file a written objection is treated as their assent to the exclusion.

The Hearing Procedure

At the hearing, the board of directors hears evidence on the following factors that, by statute, the board must take into consideration and make findings upon to determine whether to grant or deny the petition or to finally adopt a resolution to exclude the property:

(a) The best interests of all of the following:

(I) The property to be excluded;

(II) The special district from which the exclusion is proposed;

(III) The county or counties in which the special district is located;

(b) The relative cost and benefit to the property to be excluded from the provision of the special district's services;

(c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all of the properties within the special district's boundaries;

(d) Whether the special district is able to provide services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area;

(e) The effect of denying the petition on employment and other economic conditions in the special district and surrounding area;

(f) The economic impact on the region and on the special district, surrounding area, and state as a whole if the petition is denied or the resolution is finally adopted;

(g) Whether an economically feasible alternative service may be available; and

(h) The additional cost to be levied on other property within the special district if the exclusion is granted.

If the board of directors, after considering all of the factors set forth above, determines that the property should not be excluded from the special district, it must order that the petition be denied or that the resolution be rescinded.

Appeal to the County Commissioners

If the petition is denied, an appeal of the denial may be filed with the board of county commissioners of the county in which the special district's petition for organization was filed for review of the board's decision. Any appeal must be taken no later than 30 days after the decision by the board of directors is entered. On appeal, the board of county commissioners must consider the same factors that the board of directors was required to consider but must make its own determination based on the record developed at the hearing before the special district board of directors as to whether the property should be excluded.

Appeal to the District Court

If the board of county commissioners votes to deny the exclusion, the owner may appeal that decision to the district court of the county which has jurisdiction of the special district. The appeal must be filed within 30 days of the county commissioner board's decision. On appeal, the district court must review the record developed at the hearing before the special district board of directors and, after considering all of the factors that the special district board and county board of commissioners must consider, must then make its own determination whether the property should be excluded.

The statutory procedure provided above provides an owner who seeks to withdraw their property from the boundaries of a special district, a full and fair opportunity to present their case in a meaningful manner that satisfies all due process requirements. Section §3.13.5(C)(5)(c), if adopted, will work with the above discussed procedure to assure that no potable water supply entity will be permitted to provide water service within the service area of an existing special district without either (i) obtaining the consent of the Special District or (ii) petitioning for and obtaining approval of exclusion according to the procedure discussed above. Only if the board of directors of the special district, the Larimer County Board of County Commissioners, and a judge of the Larimer County District Court all independently agree that the property should not be excluded would §3.13.5(C)(5)(c) work to prevent development because of the overlapping water service.

ELCO explained in its prior letter why the City has the power and authority to include §3.13.5(C)(5)(c) in the Amendment. ELCO also explained how that provision will promote the health, safety, prosperity, security and general welfare of the inhabitants of the special districts that would be impacted by a provider being able to provide potable water service within the service area of an existing special district. That purpose includes preventing unnecessary proliferation of water service providers that could result in a diffusion of local tax sources and double taxation of the persons who reside within overlapping services areas.

As ELCO previously explained, it makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same—overlapping services should be avoided as they result in additional unnecessary costs to the public and harm existing water service providers. ELCO, therefore, strongly supports the inclusion of the provision §3.13.5(C)(5)(c) in the Amendment.

Sincerely,

Mike Scheid
General Manager
East Larimer County Water District

WEST FORT COLLINS WATER DISTRICT

West Fort Collins Water District • PO Box 426 • LaPorte, Colorado 80535
2711 North Overland Trail
Phone: 970.484.4881 • Fax: 970.484.8874

City of Fort Collins Planning and Zoning Commission
300 Laporte Avenue
Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The West Fort Collins Water District ("WFCWD") joins in the attached letter submitted by the East Larimer County Water District ("ELCO"). Like ELCO, WFCWD generally supports the proposed amendment (the "Amendment") to the Land Use Code to add Division 3.13—Water Adequacy Determination. Also, like ELCO, WFCWD shares the concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. WFCWD meets this need for developments within its service area. To approve a development located within WFCWD's service area that would propose to rely on a potable water supply and service other than WFCWD could create the serious harm stated in ELCO's letter.

For that reason, WFCWD also strongly supports the inclusion of the requirement stated in §3.13.5(C)(5)(c) of the Amendment that:

> For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement will serve the public interest by promoting the policy of avoiding the unnecessary proliferation of water service providers that could result in an excessive diffusion of local tax sources and would facilitate the elimination of the overlapping of services. WFCWD agrees with ELCO that "[t]he dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public."

WFCWD, therefore, joins in ELCO's support for the inclusion of the provision in the Amendment and would also strenuously object to any diminishment of the requirement in any final draft.

Respectfully, Doug Bigge

Doug Bigge, Manager, West Fort Collins Water district

April 26, 2023

City of Fort Collins Planning and Zoning Commission
300 Laporte Avenue
Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The East Larimer County Water District ("ELCO") generally supports the proposed amendment (the "Amendment") to the Land Use Code to add Division 3.13—Water Adequacy Determination.[i]

ELCO strongly believes that the adoption of the Amendment will further the Colorado legislature's declaration in § 29-20-301(1)(b), C.R.S., which states the determination that an adequate water supply is available for proposed new developments, is "necessary for the preservation of public health, safety, and welfare and the environment of Colorado."

ELCO shares with the City the public concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. ELCO has operated its water delivery system for over 60 years with that public purpose in mind.

In particular, ELCO supports the requirement stated in §3.13.5(C)(5)(c) that:

> For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement is consistent with and serves the same public purpose as § 32-1-107, C.R.S. does with regards to overlapping water service entities. That section prohibits a new or existing special or metropolitan district from seeking to provide water service within the service area of an existing water district unless certain requirements are met. Those requirements include that the board of directors of the water district consents to the new or existing special or metropolitan district providing the same service within its service area.

Likewise, §3.13.5(C)(5)(c) recognizes that the public purpose with regards to potable water service is best served if a new service does not result in overlapping water service areas without

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the consent of the existing provider. The consent of the existing service provider or the exclusion of the area to be served by the new service from the service area of the existing service provider will allow the existing service provider to perform the important analysis provided in § 32-1-501, C.R.S, to assure that the operation of an overlapping service provider will not harm the public, including the customers of the existing service provider.

As it did with the adoption of Colorado Adequate Water Supply statutes (§§ 29-20-301 through 29-20-306, C.R.S.), the legislature has also declared that the provisions of the Special District Act "serve a public use and ... promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado." § 32-1-102(1). The consent requirement in § 32-1-107 (and the similar requirement in §3.13.5(C)(5)(c)) serves this public purpose by preventing "unnecessary proliferation" ... "to avoid excessive diffusion of local tax sources" and to "facilitate the elimination of the overlapping of services ... [which can result in] double taxation" (32-1-102(2), (3)) of the persons residing within the service area.

ELCO believes that protecting this important public interest is essential in any development decision made by the City and believes that §3.13.5(C)(5)(c) adequately serves this vital interest. It makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same. Clearly, overlapping services resulting in additional unnecessary costs to the public are to be avoided.

This conclusion is also consistent with the implied scope of the determination of whether a water supply will be "adequate." The term "adequate" as used in the Amendment is substantially similar to definition of "adequate" in § 29-20-302, C.R.S. It means "a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability...." The dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public.

There also should be no issue that the City has the power to impose the requirement stated in §3.13.5(C)(5)(c). Section 29-20-305, C.R.S., provides the City the authority to include in its water adequacy determination procedure the right and power to include any "information deemed relevant by the [City] to determine, in its sole discretion, whether the water supply for the proposed development is adequate." As §3.13.5(C)(5)(c) promotes a proper adequacy determination of the water supply and concomitant distribution of the water supply, there should be no question that the City can impose this necessary requirement, and ELCO, therefore, strongly supports the inclusion of the provision in the Amendment and would strenuously object to any diminishment of the requirement in any final draft.

Sincerely,

Mike Scheid
General Manager
East Larimer County Water District

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[i] ELCO received an amended version of the Water Adequacy Determination yesterday. ELCO will provide any additional comments to the recent changes in a separate letter.

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Division 3.12 - **Water Adequacy Determinations**

Section 3.12.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

(A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
(B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
(C) Ensure that growth and development in the City occur in a planned and coordinated manner;
(D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
(E) Promote safe, efficient, and economic use of public resources in developing and providing water;
(F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.12.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Section 3.12.3 Application.

(A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
    (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
    (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
    (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

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(B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.

(C) **Material Changes**. The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

(1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:

(1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and

(2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.

(3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.

(2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
4. Water conservation measures, if any, that may be implemented within the proposed development;
5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development;
5. Includes a general description of the water supply entity's water obligations;
6. Includes a general description of the water supply entity's water supplies;
7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application**. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

(1) The statements in the application and associated materials are complete, correct, and reliable; and

(2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.

(D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:

(1) A summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;

(c) A description of the water rights either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.

(5) Approval documentation from other regulatory agencies such as CDPHE.

(6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(B) **Review of Application.**

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review**.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

(b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

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(c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

(d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

(D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

(1) Summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;

(c) A description of the water rights either owned or planned for acquisition required for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;

(e) Water conservation measures, if any, that may be implemented within the development;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;

(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

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(5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.

(6) Such other information as may be required by the Director.

(B) **Review of Application.**

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) Review.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) **Standards**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water;
2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

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(c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

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Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water Adequacy Determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

DRAFT

From: Steven Bushong <sbushong@BH-Lawyers.com>
Sent: Friday, April 21, 2023 10:25 AM
To: Jenny Axmacher
Cc: Dick Wolfe; Calvin Miller; Eric Potyondy
Subject: [EXTERNAL] Montava Water Adequacy

Hello Jenny

We haven't met in person yet, but I wanted to thank you for the opportunity to discuss the adequacy of Montava's planned water supply on Wednesday. I hope it was informative. A couple of points came up during the discussion that I wanted to follow up on. First, you mentioned an existing code provision that prevents the City from extending any water service within ELCO. Could you please point us to that code provision for my understanding? I was not able to find it. Second, you mentioned that you had been hearing different things from the other side on the ELCO approval issue. Since I presume all comments are public, can you please send us the comments you were referencing so we can understand that perspective and respond as needed?

Also, as we discussed, one of our principal concerns with the draft code provisions is that we believe they give an Established Water Provider such as ELCO more authority than it would otherwise legally have over future development within the City. Our specific concerns in 3.12.5(C) (1)(d)(3) and 3.12.6(A)(5) could be simply addressed by starting each paragraph with "Except for private water companies . . . " That would preserve the right to use a private water company where it makes sense to do so.

It also occurred to me that another approach would be to simply ensure that the new code provisions do not take away any legal rights, without the City taking a position on the legal issues. This would ensure the City does not inadvertently take away rights that would impact future development. The following is suggested language on that approach:

3.12.5(C) (1)(d)(3): "for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities will be ~~have been~~ removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity; or the Other Potable Water Supply Entity is otherwise entitled to provide the proposed service as a matter of law."

3.12.6(A)(5): "~~Approval d~~Documentation that approval will be obtained from other regulatory agencies where necessary, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system unless the subject Non-Potable Water Supply Entities is otherwise entitled to provide the proposed service as a matter of law.

I believe the above changes accomplish a few important things. (1) clarify that steps can be accomplished later (this allows the City if it chooses to condition approval); (2) it ensures the code does not inadvertently take away rights that exist under the law; and (3) for non-potable irrigation, it also clarifies that only necessary approvals will need to be obtained.

Thanks in advance for any information you can provide on my questions and please let me know if the City would like to discuss the above wording in the Code.

Best regards,

Steve

Steve Bushong
Bushong & Holleman PC
1525 Spruce Street, Suite 200
Boulder, Colorado 80302
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DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

Division 3.12 - Water Adequacy Determinations

Section 3.12.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

(A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
(B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
(C) Ensure that growth and development in the City occur in a planned and coordinated manner;
(D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
(E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
(F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.12.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Section 3.12.3 Application.

(A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
    (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
    (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
    (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

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(B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.

(C) **Material Changes**. The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) Application Requirements.

(1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director, to be established collaboratively with each Established Potable Water Supply Entity. Such requests shall include the following:

(1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and

(2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.

(3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.

(2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;

2. A description of the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
4. Water conservation measures, if any, that may be implemented within the proposed development;
5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development;
5. Includes a general description of the water supply entity's water obligations;
6. Includes a general description of the water supply entity's water supplies;
7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application**. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) Standards.

To issue a Water Adequacy Determination under this section, the Director must find that:

(1) The statements in the application and associated materials are complete, correct, and reliable; and

(2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.

(D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:

(1) A summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;

(c) A description of the water rights either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.

(5) Approval documentation from other regulatory agencies such as CDPHE.

(6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(B) Review of Application.

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review**.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) Standards.

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

(b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

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(c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

(d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

(D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) Decision.

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

(1) Summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;

(c) A description of the water rights either owned or planned for acquisition required for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;

(e) Water conservation measures, if any, that may be implemented within the development;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;

(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

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(5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.

(6) Such other information as may be required by the Director.

(B) Review of Application.

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) Review.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) Standards

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water;
2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

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(c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) Decision.

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

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Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water Adequacy Determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

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29-20-301. Legislative declaration.

1) The general assembly:
   a. Finds that, due to the broad regional impact that securing an adequate supply of water to serve proposed land development can have both within and between river basins, it is imperative that local governments be provided with reliable information concerning the adequacy of proposed developments' water supply to inform local governments in the exercise of their discretion in the issuance of development permits;

   b. To that end, declares that while land use and development approval decisions are matters of local concern, the enactment of this part 3, to help ensure the adequacy of water for new developments, is a matter of statewide concern and necessary for the preservation of public health, safety, and welfare and the environment of Colorado;

   c. Finds that it is necessary to clarify that, where a local government makes a determination whether an applicant for a development permit has demonstrated the proposed water supply is adequate to meet the needs of the development in accordance with the requirements of this part 3, the local government, in its sole discretion, not only makes the determination but also possesses the flexibility to determine at which stage in the development permit approval process the determination will be made; and

   d. Further finds that it is also necessary to clarify that the stages of the development permit approval process are any of the applications, or any combination of the applications, specified in section 29-20-103 (1) as determined by the local government, and that none of the stages are intended to constitute separate development permit approval processes for purposes of section 29-20-303.

29-20-302. Definitions.

As used in this part 3, unless the context otherwise requires:

1) "Adequate" means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.
2) "Water supply entity" means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.

29-20-303. Adequate water supply for development.

1) A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.
2) Nothing in this part 3 shall be construed to require that the applicant own or have acquired the proposed water supply or constructed the related infrastructure at the time of the application.

29-20-304. Water supply requirements.

1) Except as specified in subsections (2) and (3) of this section, an applicant for a development permit shall submit estimated water supply requirements for the proposed development in a report prepared by a registered professional engineer or water supply expert acceptable to the local government. The report shall include:
    a. An estimate of the water supply requirements for the proposed development through build-out conditions;
    b. A description of the physical source of water supply that will be used to serve the proposed development;
    c. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    d. Water conservation measures, if any, that may be implemented within the development;
    e. Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    f. Such other information as may be required by the local government.
2) If the development is to be served by a water supply entity, the local government may allow the applicant to submit, in lieu of the report required by subsection (1) of this section, a letter prepared by a registered professional engineer or by a water supply expert from the water supply entity stating whether the water supply entity is willing to commit and its ability to provide an adequate water supply for the proposed development. The water supply entity's engineer or expert shall prepare the letter if so requested by the applicant. At a minimum, the letter shall include:
    a. An estimate of the water supply requirements for the proposed development through build-out conditions;
    b. A description of the physical source of water supply that will be used to serve the proposed development;
    c. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    d. Water conservation measures, if any, that may be implemented within the proposed development;
    e. Water demand management measures, if any, that may be implemented to address hydrologic variations; and
    f. Such other information as may be required by the local government.
3) In the alternative, an applicant shall not be required to provide a letter or report identified pursuant to subsections (1) and (2) of this section if the water for the proposed development is to be provided by a water supply entity that has a water supply plan that:
    a. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the water supply entity;
    b. Has a minimum twenty-year planning horizon;
    c. Lists the water conservation measures, if any, that may be implemented within the service area;
    d. Lists the water demand management measures, if any, that may be implemented within the development;
    e. Includes a general description of the water supply entity's water obligations;
    f. Includes a general description of the water supply entity's water supplies; and
    g. Is on file with the local government.

29-20-305. Determination of adequate water supply.

1) The local government's sole determination as to whether an applicant has a water supply that is adequate to meet the water supply requirements of a proposed development shall be based on consideration of the following information:
    a. The documentation required by section 29-20-304;
    b. If requested by the local government, a letter from the state engineer commenting on the documentation required pursuant to section 29-20-304;
    c. Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development; and
    d. Any other information deemed relevant by the local government to determine, in its sole discretion, whether the water supply for the proposed development is adequate, including, without limitation, any information required to be submitted by the applicant pursuant to applicable local government land use regulations or state statutes.

29-20-306. Cluster developments- inapplicability.

Nothing in this part 3 shall be deemed to apply to a rural land use process regarding the approval of a cluster development pursuant to part 4 of article 28 of title 30, C.R.S.

Fort Collins-Loveland Water District

April 13, 2023

City of Fort Collins Planning and Zoning Commission

Dear Planning Commissioners:

On Tuesday April 11, 2023, the Fort Collins-Loveland Water District received the first notice from the City of Fort Collins Community Development Department regarding the proposed code review for new regulations regarding a Water Adequacy Determination that would have significant detrimental impact to the Fort Collins-Loveland Water District. The Planning and Zoning Work Session where this would be discussed will be held on Friday April 14 at 12:00pm. This provides less than 72 hours to evaluate and respond to proposed new regulatory code that has a very significant impact to the provision of potable water for a significant number of City residents today and into the future. Considering normal business hours and cutoff times for packet submittals 24 hours prior to the meeting, this provides effectively 12 business hours to respond to the City's proposed code. This is simply not adequate and indicates a lack of follow-through by staff on the stakeholder engagement direction provided by this commission and City Council.

The Fort Collins-Loveland Water District is a quasi-municipal corporation and a political subdivision of the state of Colorado with all the powers of a water district organized under Part 1, Article 1, Title 32, Colorado Revised Statutes to supply water for domestic and other public and private purposes by any available means. We serve a population in excess of 63,000 through more than 19,000 taps in an area that includes portions of the City of Fort Collins, City of Loveland, Town of Timnath, Town of Windsor and unincorporated Larimer County. Within the City of Fort Collins, we serve approximately 24,000 City Residents in City Council Districts 2, 3 and 4.

As an independent unit of government, FCLWD is not subject to the City's review and determination of adequacy of our water supplies compared to our existing or proposed service areas within the established and mutually agreed upon water service boundaries with our adjacent potable water providers. Submittal of Existing Potable Water Provider water supply plans to the City was indicated in the City's recorded video presentation introducing the proposed code posted on the City's website at https://www.fcgov.com/planning/water-adequacy. As a Title 32 Special District we take great exception to being regulated by an adjacent unit of government within our state authorized mission to deliver potable water.

In response to Section 3.12.4 (A) (1) The District does not manage our water supply commitments on a per-tap or per-subdivision basis. We manage our water resource supplies and our system demands on an aggregate basis, and continually acquire water resources to allow us to sell individual taps on demand for cash-in-lieu of water dedication. It is the District's goal to continue to maintain a water supply portfolio that equals or exceeds the aggregate demand from our customers. Due to this approach, when we issue a "Will Serve" letter, we are committing that adequate water pressure zones exist within our water distribution system to supply adequate water pressure at the customer tap, and that the overall transmission and distribution system has adequate capacity to support the general demand of this type of use. However, system distribution capacity is more often driven by fire flow

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Fort Collins-Loveland Water District

requirements than domestic customer demands. Therefore, a "Will Serve" letter is not specific to, nor is it a reservation for a commitment of water resources to a particular tap or development.

In response to Section 3.12.4 (A) (2) (a) 1. Our water supply requirements are posted on our website in our Tap Fee Schedules. We do not provide development specific pro-forma analysis of water supply requirements on a per-application or per-subdivision basis, as our requirements are very straightforward based on customer type and tap size or units of multi-family residential proposed. Regarding Section 3.12.4 (A) (2) (a) 2. Our water sources are conmingled through the treatment process and are not obtained through dedication by individual developments, nor are they delivered to or accounted to only specific developments. The District acquires water for treatment that is compatible with the treatment processes used at our Soldier Canyon treatment plant, and we have full control over the water that we acquire to determine its suitability for treatment. We do not need to submit this to the City for evaluation or review of our analysis of the "potential impact on water treatment processes or the quality of delivered potable water." It is the District's sole determination of the adequacy of our water supply that informs our ability to sell water taps on demand, or restrict tap sales if needed. Further, responding to paragraph 3.12.4 (A) (2) (b) 8. The District does not need City Council review nor Community Development approval of our water supply plans to determine if our water supply is adequate for proposed tap applications.

We would appreciate support from the City of Fort Collins to recognize the authority vested by the State of Colorado in Title 32 Special Districts such as East Larimer County Water District (ELCO) and the Fort Collins-Loveland Water District (FCLWD) and to support the local water district's exclusive and sovereign authority to regulate the provision of potable water within their service areas. When the City entertains a competing proposal from a proposed potable water provider, it undermines the statutory authority of the existing Special District that has invested financial, water rights and infrastructure resources to provide service within their service area boundary.

The proposed code goes to great length to define a process to determine if a water supply is adequate, but it does very little to address protecting the exclusive right of an existing potable water provider to provide potable water within their service area. We suggest that already-defined water service areas within and surrounding the City of Fort Collins be protected through the City planning and Community Development processes, and only when the current provider formally relinquishes their ability or willingness to serve potable water, that other provider options be considered.

Sincerely,

Chris Pletcher, PE
General Manager

Enclosures:
April 11, 2023 Email from City Staff Regarding Water Adequacy Code Review

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Chris Pletcher

From: Jenny Axmacher <jaxmacher@fcgov.com>
Sent: Tuesday, April 11, 2023 1:39 PM
To: Chris Pletcher
Cc: Eric Potyondy
Subject: City of Fort Collins Water Adequacy Determination Review Code Updates
Attachments: Att 1 - Proposed WADR Code with Header.pdf

Hi Chris,
I am a planner with the City of Fort Collins and got your contact information from Eric, our Water Attorney. The City has been working on a code update to our Land Use Code to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

Since your District is a water provider within our city limits, I wanted to make sure you were aware of the update and had a chance to review the draft and provide feedback. Fort Collins - Loveland Water District is currently considered an Established Water Provider under the proposed code updates. I have some time reserved next week if you'd like to meet to discuss it. Otherwise, feel free to send us feedback on it, or attend any of the public hearings. The adoption schedule is as follows:

April 14 – P&Z Work Session
April 26 – P&Z Public Hearing to make recommendation to Council
May 16 – Council Public Hearing/First Reading

Sincerely,

Jenny Axmacher, AICP
Pronouns: she/her
Principal Planner
Community Development & Neighborhood Services
City of Fort Collins
281 N. College Ave.
970-416-8089 office
jaxmacher@fcgov.com

April 26, 2023

City of Fort Collins Planning and Zoning Commission
300 Laporte Avenue
Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The East Larimer County Water District ("ELCO") generally supports the proposed amendment (the "Amendment") to the Land Use Code to add Division 3.13—Water Adequacy Determination.[i]

ELCO strongly believes that the adoption of the Amendment will further the Colorado legislature's declaration in § 29-20-301(1)(b), C.R.S., which states the determination that an adequate water supply is available for proposed new developments, is "necessary for the preservation of public health, safety, and welfare and the environment of Colorado."

ELCO shares with the City the public concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. ELCO has operated its water delivery system for over 60 years with that public purpose in mind.

In particular, ELCO supports the requirement stated in §3.13.5(C)(5)(c) that:

> For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement is consistent with and serves the same public purpose as § 32-1-107, C.R.S. does with regards to overlapping water service entities. That section prohibits a new or existing special or metropolitan district from seeking to provide water service within the service area of an existing water district unless certain requirements are met. Those requirements include that the board of directors of the water district consents to the new or existing special or metropolitan district providing the same service within its service area.

Likewise, §3.13.5(C)(5)(c) recognizes that the public purpose with regards to potable water service is best served if a new service does not result in overlapping water service areas without

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the consent of the existing provider. The consent of the existing service provider or the exclusion of the area to be served by the new service from the service area of the existing service provider will allow the existing service provider to perform the important analysis provided in § 32-1-501, C.R.S, to assure that the operation of an overlapping service provider will not harm the public, including the customers of the existing service provider.

As it did with the adoption of Colorado Adequate Water Supply statutes (§§ 29-20-301 through 29-20-306, C.R.S.), the legislature has also declared that the provisions of the Special District Act "serve a public use and … promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado." § 32-1-102(1). The consent requirement in § 32-1-107 (and the similar requirement in §3.13.5(C)(5)(c)) serves this public purpose by preventing "unnecessary proliferation" … "to avoid excessive diffusion of local tax sources" and to "facilitate the elimination of the overlapping of services … [which can result in] double taxation" (32-1-102(2), (3)) of the persons residing within the service area.

ELCO believes that protecting this important public interest is essential in any development decision made by the City and believes that §3.13.5(C)(5)(c) adequately serves this vital interest. It makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same. Clearly, overlapping services resulting in additional unnecessary costs to the public are to be avoided.

This conclusion is also consistent with the implied scope of the determination of whether a water supply will be "adequate." The term "adequate" as used in the Amendment is substantially similar to definition of "adequate" in § 29-20-302, C.R.S. It means "a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability…." The dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public.

There also should be no issue that the City has the power to impose the requirement stated in §3.13.5(C)(5)(c). Section 29-20-305, C.R.S., provides the City the authority to include in its water adequacy determination procedure the right and power to include any "information deemed relevant by the [City] to determine, in its sole discretion, whether the water supply for the proposed development is adequate." As §3.13.5(C)(5)(c) promotes a proper adequacy determination of the water supply and concomitant distribution of the water supply, there should be no question that the City can impose this necessary requirement, and ELCO, therefore, strongly supports the inclusion of the provision in the Amendment and would strenuously object to any diminishment of the requirement in any final draft.

Sincerely,

Mike Scheid
General Manager
East Larimer County Water District

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[i] ELCO received an amended version of the Water Adequacy Determination yesterday. ELCO will provide any additional comments to the recent changes in a separate letter.

Division 3.12 - Water Adequacy Determinations

Section 3.12.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

(A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate."

Commented [ELEMENT1]: Missing an end quote.

(B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
(C) Ensure that growth and development in the City occur in a planned and coordinated manner;
(D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
(E) Promote safe, efficient, and economic use of public resources in developing and providing water;
(F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.12.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Section 3.12.3 Application.

(A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:

Commented [MS2]: Should this be done at the BDR stage? Doing it later, such as the Final (FDP) stage is too late. This determination should be made up front.

(1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
(2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
(3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

(B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.

(C) **Material Changes**. The City shall make a Water Adequacy Determination only once for each portion of a development served by ~~a~~ different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

(1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:

(1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and

(2) A letter prepared by the Established Potable Water Supply Entity's ~~by a~~ registered professional engineer or ~~by a~~ water supply expert ~~from the Established Potable Water Supply Entity~~ stating:

~~(2)~~ (i) the Established Potable Water Supply Entity's ~~its~~ ability to provide an adequate water supply for the proposed development and;~~.~~

(3) (ii) ~~A letter prepared by a water supply expert from~~ the Established Potable Water Supply Entity ~~stating it~~ is willing to commit to provide an adequate water supply for the proposed development, including any ~~and the~~ conditions of the commitment. ~~under which it will commit to serving the development.~~

(2) The ~~Requests under this section shall also include a~~ letter ~~as~~ described in subsection (2~~1~~), shall also include the following: ~~unless exempted pursuant to subsection ((2) or (3), or both).~~

(a) ~~A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:~~

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this

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description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
4. Water conservation measures, if any, that may be implemented within the proposed development;
5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various ~~in all~~ hydrologic conditions; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development;
5. Includes a general description of the water supply entity's water obligations;
6. Includes a general description of the water supply entity's water supplies;
7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application**. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Approval Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

(1) The statements in the application and associated materials are complete, correct, and reliable; and

(2) The applicant ~~provider~~ submitted appropriate documentation establishing that the applicant is ~~y are~~ in compliance with all applicable regulations.

Commented [ELEMENT3]: Does "the proposed water supply" refer to all rights including a portfolio of water supplies (water rights, contracts, IGAs) and operational systems (storage, water system integration) that are used to meet demands under variable hydrology or the certain dedication requirement to get a service commitment? ELCO interprets this to be the total water supply, including the water dedicated for the subject development, that the EPWSE has available in average and dry years to meet the total water demand for the uses of the subject development and prior customers. Is that correct?

Commented [ELEMENT4]: Although this language is copied from the statute, is "demand management" different from conservation in (A)(2)(a)5. above? Does demand management refer to demand-side drought mitigation? Will FC use this information or is the requirement just because the requirement is listed in the statute? How is this information used by FC?

Commented [ELEMENT5]: Will FC provide an example or form to follow?

Commented [ELEMENT6]: What is the distinction between:
- Conservation versus demand management and Service area versus "the development"?

Is this referring to demand standards?

Commented [ELEMENT7]: Clarify what this means.

Commented [MS8]: Will need to make it clear that if a development is planning to add demand to ELCO's system, that developer will be required to add the corresponding supply.

Commented [MS9]: I can see how a water supply plan that is updated every 10 years can generally forecast water supply needs based on land use planning for large areas but how can that same plan forecast future developments and their specific water supply needs / demands?

Commented [ELEMENT10]:

Commented [TG11R10]: The change assumes the applicant is intended. If this provision is intended to address the Established Potable Water Supply Entity, the referenced regulations need to be identified and included in the letter or plan provided by the Established Water Supply Entity.

Commented [TG12]: 29-20-305 adds the requirement: "Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development." I suggest adding a (3) that states the applicant has satisfied all conditions required for the Established Potable Water Service Entity to provide potable water service to the Project as provided in any letter of an Established Potable Water Service Entity submitted by the applicant or any conditions provided in any water supply plan of an Established Potable Water Service Entity on file ...

(D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:

(1) A summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;

(c) A description of the water rights either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.

(5) Approval documentation from other regulatory agencies such as CDPHE.

(6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(B) **Review of Application.**

Commented [ELEMENT13]: How can a "planned" acquisition be relied upon for an adequate supply determination?

Commented [TG14R13]: If any water rights are conditional or not currently acquired, the Director should confirm all conditional or planned rights have been obtained prior to approval.

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review**.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

(b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a

Commented [RR15]: It seems that the developer will say its fine now, but how will you insure it will stay that way over time.

Commented [RR16]: Can there be a clarification if non-tributary is not considered renewable?

Commented [RR17]: Should this be own?

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modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

(c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

(d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Potable Water Supply Entity ~~Provider~~, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the ~~an~~ Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

(D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

Commented [RR18]: Redundancy is not defined. Does this mean multiple sources? Interconnects? How is the City's redundancy defined as a standard?

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

(1) Summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;

(c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;

(e) Water conservation measures, if any, that may be implemented within the development;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

Commented [MS19]: ELCO's requires that the proposed non-potable landscape irrigation supply be held to the same reliability standard as if it were a like irrigation supply from ELCO. (Supply factor = 1.5).

Will an applicant be subject to different requirements for the ELCO and City review processes or is the City planning to coordinate with ELCO in some way?

Commented [ELEMENT20]: What water quality testing is needed? Does this apply to non-potable water?

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;

(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

(5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.

(6) Such other information as may be required by the Director.

(B) **Review of Application.**

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) Review.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water;
2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) ~~in all~~ under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable

Commented [MS21]: ELCO has its own assessment and approval process for developments seeking to use a non-potable supply for SF residential lot irrigation. How will the timing of this new City review align with the ELCO process?

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Commented [RR23]: Does this exclude non-tributary groundwater? Can this be clarified?

obligations, including augmentation requirements and return flow obligations; and

3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand ~~in all~~ under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

(c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Commented [RR24]: Non-potable water supply is defined as a supply without treatment below.pi

Commented [TG25]: Add, Nothing contained in this Section 3.12.6 shall satisfy or otherwise affect any requirements imposed by an Established Potable Water Supply Entity for the providing of water service by such Established Potable Water Supply Entity.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply

of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Commented [ELEMENT26]: How is this defined?

Commented [TG27R26]: Would perpetual supply of water for the type of development proposed express the intent better?

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water Adequacy Determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

Division 3.12 - Water Adequacy Determinations

Section 3.12.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

(A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate."
(B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
(C) Ensure that growth and development in the City occur in a planned and coordinated manner;
(D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
(E) Promote safe, efficient, and economic use of public resources in developing and providing water;
(F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.12.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Section 3.12.3 Application.

(A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
    (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
    (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
    (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

Commented [MS1]: Should this be done at the BDR stage? Doing it later, such as the Final (FDP) stage is too late. This determination should be made up front.

(B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.

(C) **Material Changes**. The City shall make a Water Adequacy Determination only once for each portion of a development served by different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

(1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:

(1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and

(2) A letter prepared by the Established Potable Water Supply Entity's ~~by a~~ registered professional engineer or ~~by a~~ water supply expert ~~from the Established Potable Water Supply Entity~~ stating:

(i) ~~the~~ the Established Potable Water Supply Entity's ~~its~~ ability to provide an adequate water supply for the proposed development and;~~.~~

~~(2)~~(3) (ii) ~~A letter prepared by a water supply expert from~~ the Established Potable Water Supply Entity ~~stating it~~ is willing to commit to provide an adequate water supply for the proposed development, including any ~~and the~~ conditions of the commitment. ~~under which it will commit to serving the development~~.

(2) The ~~Requests under this section shall also include a~~ letter ~~as~~ described in subsection (2~~1~~), shall also include the following: ~~unless exempted pursuant to subsection ((2) or (3), or both).~~

(a) ~~A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:~~

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this

description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
4. Water conservation measures, if any, that may be implemented within the proposed development;
5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various ~~in all~~ hydrologic conditions; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development;
5. Includes a general description of the water supply entity's water obligations;
6. Includes a general description of the water supply entity's water supplies;
7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application**. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Approval Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

(1) The statements in the application and associated materials are complete, correct, and reliable; and

(2) The applicant ~~provider~~ submitted appropriate documentation establishing that the applicant is ~~y are~~ in compliance with all applicable regulations.

Commented [ELEMENT2]: Does "the proposed water supply" refer to all rights including a portfolio of water supplies (water rights, contracts, IGAs) and operational systems (storage, water system integration) that are used to meet demands under variable hydrology or the certain dedication requirement to get a service commitment? ELCO interprets this to be the total water supply, including the water dedicated for the subject development, that the EPWSE has available in average and dry years to meet the total water demand for the uses of the subject development and prior customers. Is that correct?

Commented [ELEMENT3]: Although this language is copied from the statute, is "demand management" different from conservation in (A)(2)(a)5. above? Does demand management refer to demand-side drought mitigation? Will FC use this information or is the requirement just because the requirement is listed in the statute? How is this information used by FC?

Commented [ELEMENT4]: Will FC provide an example or form to follow?

Commented [ELEMENT5]: What is the distinction between:
- Conservation versus demand management and Service area versus "the development"?

Is this referring to demand standards?

Commented [ELEMENT6]: Clarify what this means.

Commented [MS7]: Will need to make it clear that if a development is planning to add demand to ELCO's system, that developer will be required to add the corresponding supply.

Commented [MS8]: I can see how a water supply plan that is updated every 10 years can generally forecast water supply needs based on land use planning for large areas but how can that same plan forecast future developments and their specific water supply needs / demands?

Commented [ELEMENT9]:

Commented [TG10R9]: The change assumes the applicant is intended. If this provision is intended to address the Established Potable Water Supply Entity, the referenced regulations need to be identified and included in the letter or plan provided by the Established Water Supply Entity.

Commented [TG11]: 29-20-305 adds the requirement: "Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development." I suggest adding a (3) that states the applicant has satisfied all conditions required for the Established Potable Water Service Entity to provide potable water service to the Project as provided in any letter of an Established Potable Water Service Entity submitted by the applicant or any conditions provided in any water supply plan of an Established Potable Water Service Entity on file ...

(D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:

(1) A summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;

(c) A description of the water rights either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.

(5) Approval documentation from other regulatory agencies such as CDPHE.

(6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(B) **Review of Application.**

Commented [ELEMENT12]: How can a "planned" acquisition be relied upon for an adequate supply determination?

Commented [TG13R12]: If any water rights are conditional or not currently acquired, the Director should confirm all conditional or planned rights have been obtained prior to approval.

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review**.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

(b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a

Commented [RR14]: It seems that the developer will say its fine now, but how will you insure it will stay that way over time.

Commented [RR15]: Can there be a clarification if non-tributary is not considered renewable?

Commented [RR16]: Should this be own?

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modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

(c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

(d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Potable Water Supply Entity ~~Provider~~, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the ~~an~~ Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

(D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

Commented [RR17]: Redundancy is not defined. Does this mean multiple sources? Interconnects? How is the City's redundancy defined as a standard?

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.
(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
(4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:
(1) Summary document linking the information to the standard of review; and
(2) Report including information required under Section 29-20-304(1), C.R.S.:
(a) An estimate of the water supply requirements for the proposed development through build-out conditions;
(b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
(c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
(e) Water conservation measures, if any, that may be implemented within the development;
(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

Commented [MS18]: ELCO's requires that the proposed non-potable landscape irrigation supply be held to the same reliability standard as if it were a like irrigation supply from ELCO. (Supply factor = 1.5).

Will an applicant be subject to different requirements for the ELCO and City review processes or is the City planning to coordinate with ELCO in some way?

Commented [ELEMENT19]: What water quality testing is needed? Does this apply to non-potable water?

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;

(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

(5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.

(6) Such other information as may be required by the Director.

(B) **Review of Application.**

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) Review.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water;
2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) ~~in all~~ under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable

Commented [MS20]: ELCO has its own assessment and approval process for developments seeking to use a non-potable supply for SF residential lot irrigation. How will the timing of this new City review align with the ELCO process?

Commented [MS21]: What if the findings of ELCO and the Director don't align? ELCO will not grant a developer a reduced raw water and plant investment fee requirement if the City approves a non-potable supply and ELCO does not. What if the reverse is true?

Commented [RR22]: Does this exclude non-tributary groundwater? Can this be clarified?

obligations, including augmentation requirements and return flow obligations; and

3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand ~~in all~~ under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

(c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Commented [RR23]: Non-potable water supply is defined as a supply without treatment below.pi

Commented [TG24]: Add, Nothing contained in this Section 3.12.6 shall satisfy or otherwise affect any requirements imposed by an Established Potable Water Supply Entity for the providing of water service by such Established Potable Water Supply Entity.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply

of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Commented [ELEMENT25]: How is this defined?

Commented [TG26R25]: Would perpetual supply of water for the type of development proposed express the intent better?

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water Adequacy Determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

Division 3.12 - Water Adequacy Determinations

Section 3.12.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

(A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate."
(B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
(C) Ensure that growth and development in the City occur in a planned and coordinated manner;
(D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
(E) Promote safe, efficient, and economic use of public resources in developing and providing water;
(F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.12.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Section 3.12.3 Application.

(A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
    (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
    (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
    (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

(B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.

(C) **Material Changes**. The City shall make a Water Adequacy Determination only once for each portion of a development served by different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

(1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:

(1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and

(2) A letter prepared by the Established Potable Water Supply Entity's registered professional engineer or water supply expert stating:
(i) the Established Potable Water Supply Entity's ability to provide an adequate water supply for the proposed development and;

(3) (ii) the Established Potable Water Supply Entity is willing to commit to provide an adequate water supply for the proposed development, including any conditions of the commitment.

(2) The letter described in subsection (2), shall also include the following:

(a)

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
4. Water conservation measures, if any, that may be implemented within the proposed development;
5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development;
5. Includes a general description of the water supply entity's water obligations;
6. Includes a general description of the water supply entity's water supplies;
7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application**. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Approval Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

(1) The statements in the application and associated materials are complete, correct, and reliable; and
(2) The applicant submitted appropriate documentation establishing that the applicant is in compliance with all applicable regulations.

(D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:

(1) A summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;

(c) A description of the water rights either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.

(5) Approval documentation from other regulatory agencies such as CDPHE.

(6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(B) **Review of Application.**

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review**.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

(b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

(c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

(d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Potable Water Supply Entity, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

(D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be

entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

(1) Summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;

(c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;

(e) Water conservation measures, if any, that may be implemented within the development;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;

(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

(5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.

(6) Such other information as may be required by the Director.

(B) **Review of Application.**

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) Review.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water;
2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought,

when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

(c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water Adequacy Determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

Item 11

Hartford Homes Review of Draft Code Standards

4/17/23

Patrick McMeekin in Red
Dave Thorpe in Blue

Planning and Zoning Commission Hearing Agenda

~~Julie Stackhouse, Vice Chair~~
Michelle Haefele
Adam Sass
Ted Shepard
Samantha Stegner
York

City Council Chambers - City Hall West
300 Laporte Avenue
Fort Collins, Colorado

Virtual (Zoom or Telephone)
Cablecast on FCTV Channel 14 on Connexion &
Channels 14 & 881 on Comcast

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide 48 hours advance notice when possible.

A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.

Special Hearing

April 26, 2023
6:00 PM

Participation for this hybrid Planning and Zoning Commission meeting will be available online, by phone, or in person.

Public Participation (In Person): Individuals who wish to address the Planning & Zoning Commission in person may attend the meeting located in City Council Chambers at City Hall, 300 Laporte Ave.

Public Participation (Online): Individuals who wish to address the Planning & Zoning Commission via remote public participation can do so through Zoom at https://fcgov.zoom.us/j/99273488136. Individuals participating in the Zoom session should also watch the meeting through that site.

The meeting will be available to join beginning at 5:45 p.m. on April 26, 2022. Participants should try to sign in prior to 6:00 p.m. if possible. For public comments, the Chair will ask participants to click the "Raise Hand" button to indicate you would like to speak at that time. Staff will moderate the Zoom session to ensure all participants have an opportunity to address the Commission.

(Continued on next page)

Public Participation (Phone): If you do not have access to the internet, you can call into the hearing via phone. Please dial: 253-215-8782 or 346-248-7799, with Webinar ID: 992 7348 8136.

The meeting will be available beginning at 5:45 p.m. Please call in to the meeting prior to 6:00 p.m., if possible. For public comments, the Chair will ask participants to click the "Raise Hand" button to indicate you would like to speak at that time – phone participants will need to hit *9 to do this. Staff will be moderating the Zoom session to ensure all participants have an opportunity to address the Committee. Once you join the meeting: **keep yourself on muted status.** If you have any technical difficulties during the hearing, please email smanno@fcgov.com.

Documents to Share: If residents wish to share a document or presentation, City Staff needs to receive those materials via email by 24 hours before the meeting. Please email any documents to smanno@fcgov.com.

Individuals uncomfortable or unable to access the Zoom platform or unable to participate by phone are encouraged to participate by emailing general public comments you may have to smanno@fcgov.com . Staff will ensure the Commission receives your comments. If you have specific comments on any of the discussion items scheduled, please make that clear in the subject line of the email and send 24 hours prior to the meeting.

As adopted by City Council Ordinance 143, 2022, a determination has been made by the chair after consultation with the City staff liaison that conducting the hearing using remote technology would be prudent.

- **ROLL CALL**
- **AGENDA REVIEW**
- **PUBLIC PARTICIPATION**

Individuals may comment on items not specifically scheduled on the hearing agenda, as follows:

- Those who wish to speak are asked to sign in at the podium if they are in person
- The presiding officer will determine and announce the length of time allowed for each speaker.
- Each speaker should state their name and address and keep their comments to the allotted time.
- Any written materials should be provided to the Secretary for record-keeping purposes.
- In person participates will hear a timer beep once and the time light will turn to yellow to indicate that 30 seconds of speaking time remains and will beep again and turn red when a speaker's time to speak has ended.

- **CONSENT AGENDA**

The Consent Agenda is intended to allow the Planning and Zoning Commission to quickly resolve items that are non-controversial. Staff recommends approval of the Consent Agenda. Anyone may request that an item on this agenda be "pulled" for consideration within the Discussion Agenda, which will provide a full presentation of the item being considered. Items remaining on the Consent Agenda will be approved by the Planning and Zoning Commission with one vote.

The Consent Agenda generally consists of Commission Minutes for approval, items with no perceived controversy, and routine administrative actions.

No Items listed.

- **DISCUSSION AGENDA**

4. Water Adequacy Determination Code Update

PROJECT DESCRIPTION:	This is a request for a recommendation to City Council regarding proposed Land Use Code changes to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.
APPLICANT:	City of Fort Collins 413 S Bryan St Fort Collins, CO 80521
STAFF ASSIGNED:	Jenny Axmacher, Principal Planner

- **OTHER BUSINESS**
- **ADJOURNMENT**

Development Review Staff Report

Planning & Zoning Commission Extra Hearing – April 26, 2023

Land Use Code Amendment – Water Adequacy Determination Review Code Update

Summary of Request

This is a request for a recommendation to City Council regarding proposed Land Use Code changes to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

Next Steps

The Planning and Zoning Commission's recommendation will be forwarded to City Council as part of their consideration to adopt the proposed Land Use Code changes.

Staff Recommendation

Approval of the proposed Land Use Code changes.

Applicant

City of Fort Collins
PO Box 580
Fort Collins, CO 80522

Staff

Jenny Axmacher, Principal Planner
p. (970) 416.8089
e. jaxmacher@fcgov.com

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3. Summary of Proposed LUC Changes 3
4. Public Outreach 4
5. Recommendation.....4
6. Attachments.....4

1. Project Introduction

A. BACKGROUND

Water is a crucial and constrained resource, and the City strives to ensure that development meets the community's vision and expectations for responsible resource management. City Plan includes policies to ensure water is used wisely and our community is prepared for a changing climate. The plan also supports managing water resources in a manner that enhances and protects long-term water quality, supply, and reliability for current and future residents.

The necessity for an updated water adequacy review program stems from the limited supply and high cost of water resources, which have resulted in developers pursuing more creative ways to provide water to their proposed developments, particularly projects striving to provide affordable housing or the denser development patterns called for in City Plan. One development contemplating a more unique and potentially innovative approach to supplying water resources is the Montava Planned Unit Development (PUD), which proposes a groundwater-based water supply for both potable and non-potable water service. The developer believes this system will improve the overall resiliency of the water supply for the area while also reducing the cost.

Because the City does not currently have a review process or criteria for "non-standard" water service models, including groundwater systems, new policy and code are needed to confirm that future residents are adequately served. While the Montava project has generated the immediate need for this type of review, staff believes a comprehensive program could have benefits for reviewing all new developments moving forward, regardless of the water source.

B. REQUIREMENT FOR WATER ADEQUACY REVIEW

This review process is being proposed to further effectuate a Colorado state statute (Section 29-20-301, et seq., C.R.S.), which states:

> *A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.*

For this regulation, the Colorado state statute defines some key terms, including the following. "'Adequate' means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability." "'Water supply entity' means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail."

Currently, development within the City only occurs within the boundaries of existing City (Fort Collins Utilities) and Special District water providers, such as Fort Collins-Loveland Water District and East Larimer County Water District, and the adequacy determination is made through the issuance of a "will serve" letter from the established water provider. The City receives a will serve letter from the provider during the building permit process for the new development. A will serve letter states that the provider has the infrastructure and capacity to provide water service to the proposed development project and commits to providing that service.

Pursuant to state statute, 'will serve' letters meeting certain requirements may satisfy the water adequacy determination, but staff will soon be faced with a proposal that is outside the bounds of the current system and needs a more robust and transparent process to evaluate the more complex proposal. It is partly the responsibility of the City to ensure that future residents are well served by an adequate system.

2. Comprehensive Plan & City Policy Alignment

A. CITY PLAN

City Plan (2018) offers the following guidance related to water supply in the city. The proposed LUC changes align to this guidance:

Principle LIV 9: Encourage development that reduces impacts on natural ecosystems and promotes sustainability and resilience.

Policy LIV 9.2 - OUTDOOR WATER USE Promote reductions in outdoor water use by selecting low-water-use plant materials, using efficient irrigation, improving the soil before planting and exploring opportunities to use non potable water for irrigation.

Principle ENV 6: Manage water resources in a manner that enhances and protects water quality, supply and reliability.

Policy ENV 6.1 - WATER RESOURCE PLANNING Partner and collaborate with water service providers to ensure adequate, safe and reliable water supplies in accordance with the Water Supply and Demand Management Policy. To the extent feasible, coordinate on supply and storage development and demand modeling.

Policy ENV 6.2 - WATER CONSERVATION AND EFFICIENCY Continue and enhance water conservation, efficiency and education programs in accordance with the City's Water Efficiency Plan. Consider new and revised land-use and site-planning standards to reduce water use in both new and redevelopment projects. Where possible, coordinate on programs and services to create consistent experiences for users regardless of their location and water service provider.

Policy ENV 6.3 - DROUGHTS AND VULNERABILITY Develop drought and vulnerability planning that takes into consideration the future impacts of climate change; potential demand changes from increased urban and multifamily developments; and other hazards and vulnerabilities, such as disruption of supplies due to wildfires. Partner and collaborate with water service providers in the GMA.

Principle SC 3: Minimize risks to life, infrastructure and property from natural hazards or exposure to hazardous materials.

Principle HI 1: Be a model for equitable, effective and transparent local governance.

Policy HI 1.8 - SERVICE PROVIDERS Coordinate closely with and promote coordination among service providers in needs assessment, facility siting and other matters to ensure continuing delivery of effective, equitable and efficient services.

B. HOUSING STRATEGIC PLAN

The Housing Strategic Plan (2021) provides the following guidance related to water supply. The proposed LUC changes align to this guidance:

18. Increase awareness and opportunities for creative collaboration across water districts and other regional partners around the challenges with water costs and housing.

Why Prioritized? Water costs have a significant impact on housing development costs; addressing water cost challenges creates opportunity to improve affordability and housing product diversity. Acknowledges regional nature of water and seeks opportunities for education and collaborative solutions; potential for direct impact on sustainability and affordability.

C. CLIMATE ACTION PLAN

Our Climate Future (2021) provides the following guidance related to water supply within the City. The proposed LUC changes align to this guidance:

Big Move 3 – Climate Resilient Community: People, buildings, watersheds and ecosystems are prepared for the threats of climate change.

CRC1 - Adopt a holistic approach to integrated water resource planning and management (One Water Approach)

CRC3 - Expand and enhance water efficiency programs and incentives.

CRC4 - Update codes to address existing and new developments' indoor and outdoor water efficiency.

Big Move 5 – Live, Work and Play Nearby: No matter where we live, we all can meet our basic daily needs without driving across town.

LWPN4 - Increase density and mixed uses through the land use code as guided by City Plan.

Big Move 7 – Healthy, Affordable Housing: Everyone has stable, healthy housing they can afford.

HAH3 - Increase the number and diversity of housing types and allow more homes per lot (density) via an update to the City's Land Use Code.

D. CITY STRATEGIC PLAN

The water adequacy determination review can be viewed as a tool kit to look at water affordability and support sustainable development patterns and objective 1.6 of the City's 2022 Strategic Plan.

1.6 Transform regulations and revise procedures to increase clarity and predictability to ensure new development advances adopted City plans and policies.

3. Summary of Proposed LUC Changes

The proposed Land Use Code changes may be found in Attachment 1, and include an amendment to Article Three, adding Division 3.12, and adding nine new definitions to Article Five, Section 5.1.2 Definitions. A summary of the proposed changes include:

1. Article Three, Division 3.12 – Water Adequacy Determinations

The proposed new division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S.

The subsequent sections outline the applicability, application, and procedures and standards for the three different review types:

- Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District.
- Other potable water supply entities such as new private water supplies or metro districts.
- Non-potable water supply entities, such as irrigation water supplied by metro districts.

Established Entities

For established water suppliers, the code provides options for compliance through review of water supply plans or letters from engineers detailing how the water supply system functions. Once an initial approval is completed, the process would move forward similarly to what the City does now with will serve letters.

Other Entities

A more detailed process is proposed for other water providers and the City has identified the following characteristics for evaluation criteria:

- Water Quality
- Quantity of Water
- Dependability of Supply and Supplier
  - Supply Resiliency
  - System Redundancy

Is this different than what is done now? The initial approval scares me.

- Maintenance and Outages

- Availability of Supply
- Financial Sustainability of Supplier Capitalization

In general, the standards compare the new proposed system to the existing municipal utility.

Non-potable Entities

The criteria for non-potable systems looks to make sure the supply has enough quantity and quality to support the associated uses such as irrigation for landscape.

2. Article Five, Division 5.1.2 – Definitions

The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water shall mean water, also known as drinking water, that is treated to
and federal standards for human consumption.

Water Adequacy Determination shall mean a determination that the proposed w
development is adequate.

Water supply entity shall mean a municipality, county, special district, water con
conservation district, water authority, or other public or private water supply enti
application, or within three years of application, supplies, distributes, or otherwis

Water supply system shall mean all infrastructure planned or used to divert and
development.

I agree. The implications of this code are really very significant and we feel there are major problems with this draft code. Those that develop non-pot systems should have been brought into this conversation much earlier than right before P&Z.

4. Public Outreach

A. BACKGROUND

This proposed Land Use Code change did not include specific public outreach meetings, however information on the code update was provided on the website, including an educational video. Staff will conduct stakeholder outreach meetings with the Special Districts and development stakeholders in the time between the P& Z work session and the P& Z hearing. Additional information on these meetings will be provided closer to the hearing date.

Sure, seems like this feedback should be gathered before going to P&Z

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The information for the hearing packet is posted in the Development Review webpage.

Notice (Posted, Written and Published)

Published Notice: April 9, 2023. Coloradoan

5. Recommendation

Staff recommends the Planning and Zoning Commission forward a recommendation to City Council to approve the proposed Land Use Code changes.

6. Attachments

1. Proposed Land Use Code Changes
2. Staff Presentation

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

Division 3.12 - Water Adequacy Determinations

Section 3.12.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

(A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
(B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
(C) Ensure that growth and development in the City occur in a planned and coordinated manner;
(D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
(E) Promote safe, efficient, and economic use of public resources in developing and providing water;
(F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.12.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expand increased water use, whether potable or non-potable, within the incorporated municipal the City. No such development or redevelopment shall be approved and allowed to proce Director has determined that the proposed water supply for the development or redevel adequate.

Design and adequacy are not the same. If the City wants to review adequacy, that should be done before the design process begins or in its very early stages.

Section 3.12.3 Application.

This is too late. You could be getting ready to go under construction and find out your non-pot system is not viable

(A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
(1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
(2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
(3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

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(B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.

(C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Supplies Entities should be able to approve their own non-pot systems

Should not ELCO or FCLWD be able to make their own determination about their own ability to serve?

Also, if a ditch company operates their own non-pot system, or provides to a development in bulk, that entity should make the determination of their ability to serve.

Section 3.12.4 - Procedures and Standards for Water Adequacy Determinat
Water Supply Entities

(A) **Application Requirements.**

(1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:

(1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and

(2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.

(3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.

To be clear, is this section ONLY for potable? Please clarify.

How are these different?

(2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

This seems like the City trying to get into ELCO and FCLWD's business

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
4. Water conservation measures, if any, that may be implemented within the proposed development;
5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

Same comment as above.

(b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development;
5. Includes a general description of the water supply entity's water obligations;
6. Includes a general description of the water supply entity's water supplies;
7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

What happens if ELCO or FCLWD miss one of these?

How do these requirements affect them and their daily operations? It cannot be the developer's responsibility to make sure that third party quasi-governmental agencies are in compliance with this section in order for their developments to proceed.

(B) **Review of Application**. The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

Same as above. This is way too late in the process.

(C) **Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

(1) The statements in the application and associated materials are complete, correct, and reliable; and

(2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.

(D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

Can this whole code just boil down to this one section? Unless there are problems with existing providers, why include the other sections? Those entities already review non-pot plans to ensure there is adequate non-pot supply before they authorize inside use-only taps. They also confirm they have potable supply.

BJECT TO FURTHER REVISION AND REVIEW

ubject to appeal pursuant to the Land Use Code or Code of the City of Fort

Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

Nobody in their right mind should pursue this

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:

(1) A summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

(b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;

(c) A description of the water rights either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;

(f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

This is really vague. Approvals from CDPHE for what?

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.

(5) Approval documentation from other regulatory agencies such as CDPHE.

(6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(B) **Review of Application.**

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

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to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review**.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.

In in instance such as this, ALL rights should be in-hand before making an application. Proving they can be acquired seems odd and probably too late in the process.

b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

In in instance such as this, do you require a letter from the aug plan? That should be required.

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(c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

If a third party were to propose to become its own water district, I would think it would be in the public's interest for the decision maker for a modification to be above the Director. These are reasonable baseline standards. If they cannot be met, it should be elevated in the public process.

(D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

If there is a new, private potable water provider and they also want to deliver non-pot, then this section makes sense. Otherwise, it makes development far more complicated without appearing to address an established problem.

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acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

(1) Summary document linking the information to the standard of review; and

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed developm through build-out conditions;

(b) A description of the physical source of water supply that will be used to se proposed development. This description must include water quality test r results of an analysis investigating any limitations of use due to poor quali

(c) A description of the water rights either owned or planned for acquisition for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the yea on augmentation requirements;

(e) Water conservation measures, if any, that may be implemented within the development;

(f) Water demand management measures, if any, that may be implemented w development to account for hydrologic variability; and

(g) Description of all water conservation measures to be applied in the develo and how they would be enforced and effectuated. At a minimum, smart co and flow meters are required per the development code;

(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

This should be controlled by the Water Provider and not the City. If the system is in the utlities District boundary than yes.

To what standards is it held, though?

For surface water and reservoir water, this is not a reasonable standard, as the sources of those waters constantly varies for the ditch companies.

Agreed. This creates an opportunity for conflicting standards between COFC and other providers.

This should not be the Cities purview

Is this intended to mean in homes? Or in common areas?

This whole section is very vague and talks about subjects but doesn't have any specific standards.

And how is this related to water conservation? It shouldn't be set against anything. If non-pot is viable, it should be encouraged. The non-pot system is separate from low water plants or other landscaping issues. It's only about the source and delivery of raw water.

2 Approvals

Item 11.

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(5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.

(6) Such other information as may be required by the Director.

(B) **Review of Application.**

Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

Review.

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

(C) **Standards**

1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

(a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. relying upon a renewable and/or sustainable physical supply of water;
2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

Agreed. This standard assumes the water provider is also reviewing. What is the public benefit of the City also doing so for ELCO and FCLWD?

Too late

We had to do master plan estimates for the whole community early in the process, well before we had a final landscape plan. Master planned communities will build the backbone infrastructure up to a decade in advance. This timing doesn't work.

Agreed. For master planned communities, this is an ODP issue. For smaller developments it should be a part of PDP because that's when the water provider already requires this information from the developer.

ELCO has a different standard

And that's part of our big fear here - multiple standards by different governments reviewing the same thing.

The potable water provider should simply require confirmation from the aug plan that the proposed non-pot system is in compliance with the aug plan.

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DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

(c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. if the non-potable water supply system includes treatment, that the treatment can and will operate sustainably in a ma economical, safe, and that does not produce any harmful by
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

Again, this is undefined. If it's a metro district, the City shouldn't need to see the finance model to prove it can be built.

See above. Isn't that the aug plan's job already? Since those are often at-will the developer is already heavily incentivised to stay in compliance so they don't get kicked out.

ision.

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

Timing doesn't work at DCP if a decree is required.

(2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.

(3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

If the City is going to get into this business, there has to be some appeal process. The stakes are so high for developers with these systems, especially in our case where there is a PBA explicitly stating we have to have a non-pot system. This code has no standards to weigh a system against, so a denial by the Director would essentially kill the project. There needs to be recourse.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

DRAFT SUBJECT TO FURTHER REVISION AND REVIEW

Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water Adequacy Determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

What is this three-year requirement? It's not mentioned anywhere else in the code.

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City of Fort Collins

Water Adequacy Determination Review
Land Use Code Update

City of Fort Collins

Plan Alignment

- Water Adequacy Determination Review Program supports the goals of
  - City Plan
  - Housing Strategic Plan
  - Climate Action Plan
- Viewed as a tool kit to look at water affordability and support sustainable development patterns
- Neighborhood Livability & Social Health - 1.6 - Align land use regulations and review procedures to guide development consistent with City Plan.

- Water is a critical resource and its cost and availably impact new development
- Existing review process
- Need for a more robust process
  - More complicated development
  - Potential for creation of new water providers

Completely understand and agree with this one. It makes total sense and is needed.

However, where is the current breakdown in the current code and development process? it worked well at Bloom. This new code would significantly increase development complexity and if it is not addressing an identified problem, where is public benefit?

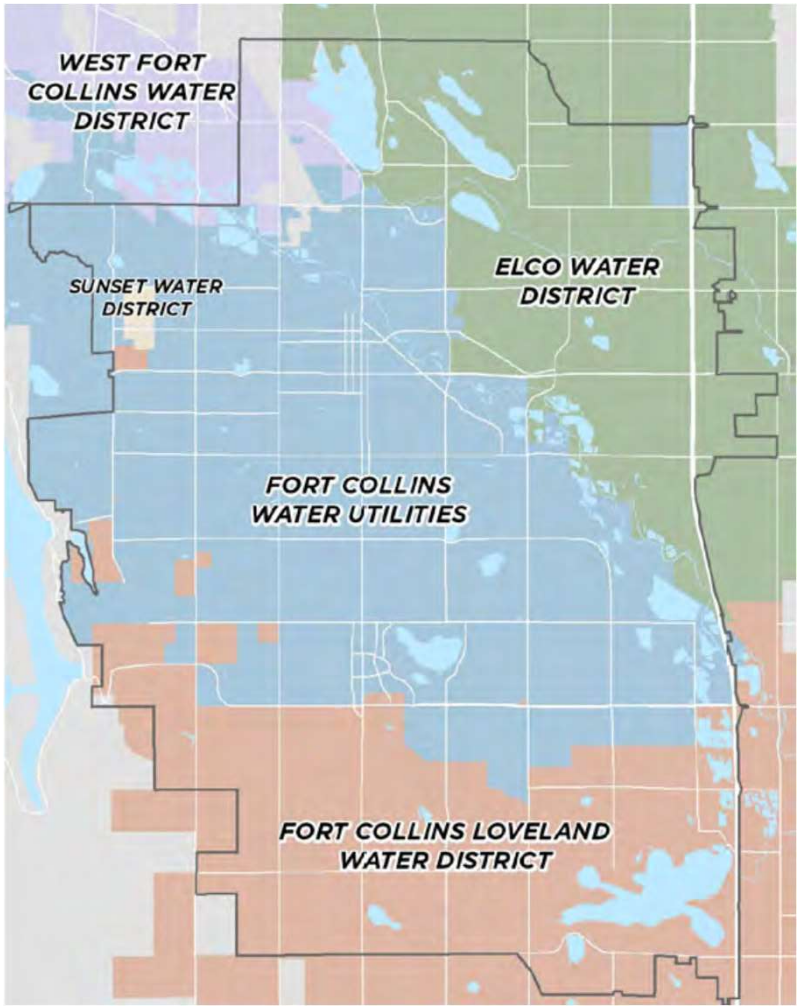
This review process is being proposed to further effectuate Section 29-20-301, et seq., C.R.S. which states:

> A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.

City of Fort Collins

Current Process

- Development occurs within the district boundaries of existing water providers
- Will Serve Letter issued by provider
    - Part of the building permit process



City of Fort Collins

Other Agencies 6

- Other Agency Review
  - Other agencies have the authority to review new providers
  - CDPHE
    - Requires public water systems demonstrate adequate capacity to construct, operate and manage the new public waterworks.
  - Water Court
    - There is also likely a role for Water Court to plan in validating claims for water under Colorado Law.

Avoiding Water Court and change cases is part of what makes non-pot systems so attractive. They also mean a much smaller dedication of raw water to the potable provider when that is required. Please avoid brining in Water Court unless necessary.

City of Fort Collins

Proposed Evaluation Process – Existing Providers

- Keep similar process for existing providers
  - Will Serve Letter
- Consider opportunities to
  - Review proposed updates to water supply plans
  - Improve letters
  - Streamline process
  - Increase consistency between different providers

Why not same?

Agreed. Where is the breakdown that this level of code is needed for all projects?

I doubt this will streamline the process. How do ELCO and FCLWD feel about COFC reviewing their water supply plans

And is the developer then hamstrung if the provider and COFC disagree on some background information?

City of Fort Collins

Proposed Evaluation Process – New Providers

- Evaluation criteria for new providers
  - Water Quality
  - Quantity of Water
  - Dependability of Supply and Supplier
    - Supply Resiliency
    - System Redundancy
    - Maintenance and Outages
  - Availability of Supply
  - Financial Sustainability of Supplier
    - Capitalization
- Would apply to potable and non-potable supplies

City of Fort Collins

Timing and Approval Authority

- Timing
- The state statute leaves the determination timing during the development process up to the purview of the local jurisdiction however they limit making the determination to **only once** unless something materially changes.
- The draft code will identify the milestone in the development review process when this determination will be made.
- It will also identify what would trigger a reassessment.

As stated above, this proposed point is way too late in the development process.

I didn't read that section above. What does trigger it?

- Approval
- The determination of adequacy would be made administratively subject to a review and recommendation by a qualified water consultant.

The draft code only discusses the Director, not a consultant. When does the consultant come in to the process?

City of Fort Collins

Next Steps

- The major milestones for this project are:
  - Draft Code Review
  - P&Z Recommendation
  - Council Consideration
  - Implementation

- If you'd like to learn more about this code update or provide comments, please contact Jenny Axmacher at jaxmacher@fcgov.com

THANK YOU!

City of Fort Collins

Planning and Zoning Commission Minutes

David Katz, Chair
Julie Stackhouse, Vice Chair
Michelle Haefele
Adam Sass
Ted Shepard
Samantha Stegner
York

Virtual Hearing
City Council Chambers
300 Laporte Avenue
Fort Collins, Colorado

Cablecast on FCTV, Channel 14 on Connexion &
Channels 14 & 881 on Comcast

The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (TDD 224-6001) for assistance.

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Regular Hearing
April 26, 2023

Chair Katz called the meeting to order at 6:00 p.m.

Roll Call: Haefele, Sass, Shepard, Stackhouse, Stegner, York

Absent: Katz

Staff Present: Frickey, Sizemore, Claypool, Yatabe, Axmacher, Dial, Daly, Potyondy, and Manno

Vice Chair Stackhouse provided background on the Commission's role and what the audience could expect as to the order of business. She described the role of the commission, noting that members are volunteers appointed by City Council and that they are not staff and do not get paid. The Commission members review the analysis by staff, the applicants' presentations, and input from the public and make a recommendation of approval or not of approval to Council for their consideration. She noted that this is not a quasi-judicial hearing.

Agenda Review

None noted.

Public Input on Items Not on the Hearing Agenda:

None noted.

Consent Agenda:

None noted.

Public Input on Consent Agenda:

None noted.

Vice Chair Stackhouse did an overview of the process for the discussion item on the agenda.

Discussion Agenda:

3. Water Adequacy Determination Code

Project Description: This is a request for a recommendation to City Council regarding proposed Land Use Code changes to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

Recommendation: Approval of the proposed Land Use Code changes

Secretary Manno reported that communications from stakeholders at Bloom, ELCO, FCLWD and Montava had been received and are included in the packet starting on page 54. And that a third correspondence from ELCO has been submitted but is not in the current published packet and that it will be included in a later version as well as a presentation from Montava.

Staff and Applicant Presentations

Planner Axmacher gave a brief verbal/visual overview of this project.

Public Input (3 minutes per person)

Steve Bushong, Law Firm of Bushong and Halleman, representative of Montava along with Dick Wolf of Leonard Rice Engineers. They were granted 15 minutes of speaking time and spoke to the groups concerns with the Water Adequacy Plan. They feel an augmentation plan would be efficient and that over appropriation of systems has happened over time. We keep finding new ways to develop water. For Montava they landed upon an augmentation plan. The system planned for Montava is not a unique system. Montava supports the staff and the Commission's effort to get this code in-place, but they want to make sure it is right, but not rushed. They are committed to being a partner in this process. The primary concern is that the code is giving the established potable water supply entities greater control and authority than they have, and these entities may not have the same incentives to approve new water supplies. Even when they may be more reliable or economical. Affordable housing requires affordable water. Please take the time to get it right!

Mike Scheid, General Manager for the ELCO Water District, supports the requirements stated 3.13.5(C)(5) of the City's proposed water adequacy rules.

Chris Pletcher, General Manager for the FCLWD, the District strongly supports 3.13.5(C)(5).

Max Moss, Montava, spoke generally about the Montava plan.

Staff Response

Assistant City Attorney Potyondy spoke to provision, the requirement to exclude from the established service providers or gain consent. With the Water Adequacy Determination discussions, it was determined that this needed to be decided upon by City leadership. The staff recommendation is based in part on what could be discerned from previous City policies, respecting the boundaries of the neighboring water providers and in part based on City code language that Mr. Bushong referenced, Section 26-4. Under which the city agrees to not extend water or wastewater service into the service areas of duly established areas of districts. It is correct that the City can waive and not follow this provision if the districts are providing an unreasonable level of service to the property. Historically this has not been used. This could be incorporated into the code. It is primarily an issue that needs a

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decision on now that there are being proposed alternative water supplies that could potentially disrupt well established service area boundaries amongst the water providers.

Planner Axmacher commented that with the timing issue it is the City's best interest to get the code updated and try to meet the deadline to be able to go back to the water court judge and tell him that we have made progress.

Attorney Yatabe asked when the proposed trial date is set. Attorney Potyondy responded that the trial date that will be set at the June 1st status conference will be set in late 2025. Detailed reports will need to start circulating 8-9 months beforehand. The risk is that the city and the roughly twenty-five others working on the case could be working on one version of the Montava augmentation plan only to have it change significantly based on what results from the water accuracy determination.

Commission Questions / Deliberation

Commission questions

1. Autonomy of special districts with the State mandate from the municipality to make the adequacy determination.

Member Shepard asked, for clarification, the staff report contained references to not comply with those or are we preempted to use our home rule status? Attorney Yatabe responded that the water adequacy determination is really matter of State interest. He believes we are required to do the process up to this point. Also, since much of the area is provided for by Fort Collins Water Utilities. He feels what was worked on with staff is that there is some latitude within the statute. For example, the point at which that determination is made and some of the details of how water adequacy is determined is left to the local government entities.

2. To require exclusion or consent from the established potable water entities or other potable water entities to operate within their service area.

No questions.

3. Establish potable water and reviewing of resource information.

No questions.

4. Evaluation of water supplies to ensure that they will be adequate for our community members for the lifetime. Is there any additional information the city could require?

No questions.

General clarifying questions from Commission members.

Member York, 3.13 and 3.12 is going to be held for which? Planner Axmacher responded that this is new Section 3.13 and that 3.12 is being held for oil and gas.

Member York asked if there were other types of utilities that must provide a letter of adequacy or will serve letter in our GMA area? Planner Axmacher responded, none that she was aware of.

Member Shepard, Does the PUC come into play at all with what the Commission is discussing? Planner Axmacher is not aware of anything. Attorney Yatabe was also not aware the PUC plays into this as information otherwise. They do not play into it as our Fort Collins Water Utility. Water Engineer Daly responded that he agrees with Mr. Yatabe that he does not think that Public Commissions play a role with water providers here.

Member Shepard, reading the overall attempt, he is under the impression that there are two water providers in the city that do not have water treatment plants. If a new subdivision were to come in and those service areas, would they be able to meet the requirements of proposed 3.13, by not having their own water treatment plant? Planner

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Axmacher responded that having a water treatment plant is not a requirement, but that we would want to make sure that the water was of an acceptable quality wherever they are getting it from.

Member Sass commented that our three requirements, the two letters and something else would be required for them to go ask wherever they are getting their water from. Is this where the letters come in that would be reviewed? Planner Axmacher responded yes, the districts two options; they can either provide copies of a water supply plans that meets the requirements that are outlined, or they can submit a letter from a professional engineer or supply expert that outlines the resources that they are using for their water. The second letter is the normal will serve letter. Once reason for the alternative is take into account that smaller districts may not have a water supply plan.

Member Shepard asked if it was anticipated that satisfying the requirements of the proposed 3.13 inside the Fort Collins Utilities Service territory would require the developer to rely on a consultant? Planner Axmacher responded, not within an established service provider area because they are already providing will serve letters now and the proposed process keeps this similar requirement.

Member Shepard asked if it was anticipated that the providers establish a standard will serve letter, or is it on a case-by-case application by application basis? Planner Axmacher responded that she believed the districts provide consistent letters within their own district, but not consistent across districts. This code is looking to create consistency and staff would be happy to work with the districts if a template is sought after and that would try to meet everyone's needs.

Section 3.13.(C)5(C) clarifying comments.

Vice Chair Stackhouse understands the basis for 3.13.5(C)(5). It is her understanding there are other situations in the State that are similar to what is being proposed by Montava. As part of this process, did we look at the language used by those other municipalities and is there a similar type of language that they use? Planner Axmacher responded that they could not find any other municipalities that have similar code language. The only place where they could find language to reference was La Plata County. Attorney Potyondy responded that he thought that it was clear that the proposed water supply that Montava is proposing to develop of relying on tributary ground water and using an augmentation plan as the legal vehicle is a fairly common situation throughout the State. What is a less common situation is the situation of a large-scale private water company within the boundaries of an existing water provider. Vice Chair Stackhouse commented that it was the letters that she was referring to and, in those situations, whether those municipalities have addressed or have a similar provision in their codes that address what the existing water provider has the ability to do.

Member Shepard asked to bring up the slide that had the picture of the boxelder watershed and the aquifer that would be tapped. He asked for more background on the 40% of what, the denominator, what is the numerator, etc. Mr. Wolf responded that what he was referring to is part of the historic irrigation on that property pumping from the wells that will serve the Montava development; that was the 40% reduction compared to what it was historically to what the future pumping demand will be for Montava. This information is to help show that this further supports the long-term sustainability aquifer, Montava's plan is not going to increase the draft on the aquifer, it will be reduced impact for future buildout. Member Shepard commented that this then gets to replenishment. Mr. Wolf: it is a reduction in the demand on the aquifer. Member Shepard asked how many acres the development owns. Mr. Bushong responded roughly 1,000 acres. The aquifer has historically been used for agriculture. Roughly 20 to 25,000-acre feet of pumping occurs for the aquifer.

Member Shepard commented that Mr. Moss made a comment "that the city took the water off the land." Was this a buy and dry, what happened there? Mr. Moss responded that Anheuser Busch has an agreement with the City in the form of a dedication to the City and that the City had an obligation to serve them that amount of water for 30 years and that 2,000 acre-feet could be used on this property. When they did the renewal of the agreement, they removed the right to use that water on the property by allocating it all to the plant. Clarification, the city removed.

Member Shepard asked where the ground water that will be pumped, be treated? Mr. Bushong responded that the Montava plan has two different well fields, one on Boxelder Creek and one on the west side of I-25. There will be a water treatment plant on the Montava property. The same ground water that has historically been used to irrigate the property that will then be used, treated, and delivered through in-house use only and then 95% of the water for

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in-house use will come back through the Boxelder Sanitation District, the existing wastewater treatment plant for Boxelder.

Member Sass asked if there had been changes made to the draft. Planner Axmacher responded that she emailed the redlines at the same time the packet was released. Vice Chair Stackhouse clarified with Planner Axmacher that the Commission received two comment letters after the redlined language.

Planner Axmacher circled back regarding to the codes conversation commenting that she did pull up La Plate County's code and that they do have a provision, general requirement, "All proposed development within 400' of a watermain of a public water system or designated regional public water system shall connect to such system unless the applicable provider certifies in writing that the system lacks sufficient capacity to serve the proposed development or the connection would technically impracticable or the provider otherwise refuses to serve the proposed development".

Member York questioned the speed to which this proposal is moving, do we still have the same concern with the speed? Planner Axmacher responded that she did not know if she could answer the question other than that staff is doing the outreach that would have been completed given the same amount of time.

Member Shepard asked Mr. Pletcher if it was correct that he is asking for any land being removed that it is either consent by the district or it is removed. Mr. Pletcher responded that under Title 32 there is an exclusion process. A piece of property that would like to be excluded from the district must apply for the exclusion, give 30-day notice, and attend a public hearing, and then the Board evaluates and makes a decision. It is one in the same, it is a request and then an exclusion. Member Shepard asked if the decision of the Board appealable or is there an appeal process? Mr. Pletcher responded, not above the Board. Member Shepard asked if a decision could be appealed to the court? Mr. Pletcher responded that he would have to consult the attorneys.

Vice Chair Stackhouse asked Mr. Pletcher; when holding hearings and considering requests, how do you consider the cost factors in providing services, your cost versus what those that might want to find an alternative service? Mr. Pletcher responded that many of the costs that have been considered have been invested over the past 60 years to develop the infrastructure to make sure there are water tanks that are regional in nature to be able to serve that development. The costs are not just isolated to that parcel, they are the whole system. Vice Chair Stackhouse is seeking understanding for consumer cost effectiveness in an environment where you have an area that you serve, what incentives are there to be the most cost-effective provider? Mr. Pletcher responded that they have a long-term view, able to make investments in projects with a long view of the future based on the City's growth plans, anticipate where growth is happening and define the boundaries.

Member Shepard asked Mr. Pletcher at what point they put pipe into the ground? Mr. Pletcher responded that the philosophy is that growth pays its own way. The grided infrastructure to get water to the boundaries of the parcel is something that is planned decades in advance and size those pipes to make sure they can accommodate the planned use in that area and if they are not able to serve that land due to an exclusion, then they have invested in pipe size to get to that area of property that can never be used in that area. Member Shepard asked if a cost would be assigned to recover the sunk costs for anticipated service? Mr. Pletcher responded that they do evaluate the costs and them down to a number and compare it to the cost of maintaining that service versus the cost of being reimbursed for that service. Member Shepard asked if his or ELCO's district ever had an exclusion or de-annexation request come to the board? Mr. Pletcher responded that they have internally evaluated one. Mr. Scheid of ELCO responded that ELCO has not excluded much property and it is usually at the request of the property owner. ELCO has been working with the city to try to establish a service area boundary for over the last (+) years along Lemay. This is the only informal agreement and the only exclusion that can be thought of. A full analysis was not completed.

Member York asked about adding to areas as opposed to de-annexing, regarding special districts where some of them have spaces on the edge where they can grow, could the boundary be changed in this way? Vice Chair Stackhouse reframed the question to; Is there any land not covered currently by a water district? Mr. Pletcher responded not inside the city but next to the current boundaries for the current districts that are also included in the city. Member York wants to understand the infrastructure costs. Is it set now or is there potential for other changes that could happen? Mr. Pletcher responded that it is a geographic question if it were near those facilities that ELCO would have invested in the transmission line specifically, then potentially. But the sense is that any additional

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property that could be included within ELCO service area that is also within the city is already in. Abutting GMAs are pretty well defined, like Timnath and Wellington unless they were to exclude from another municipality or water district and be included in ELCO. If this were the case, it would be on the fringe.

Member Shepard asked about ELCO's portfolio, if you do not have the portfolio and are relying on the developers to bring water rights, how do you know you can serve your whole territory? Mr. Pletcher responded that ELCO's policy has been that if you are going to add demand to the system, then you are going to add the supply required to meet that demand. Unlike the City of Fort Collins and Greeley, ELCO does not have the rich water right portfolios. It is subject to availability.

Member Haefele asked if a new development proposing an augmentation scheme as their water supply, if that could be something that is added to ELCO's portfolio as a way of bringing a supply of water? Mr. Pletcher responded potentially, there is a lot to consider specifically regarding water quality, comingling, interconnects with sister districts in the sharing of transmission capacity. Member Haefele commented that it would be fair to say that approving the Land Use Code changes before Montava in a general sense would then just be down to the specifics and this could be worked out case by case. Mr. Pletcher responded that there are a lot of questions that must be answered. Planner Axmacher responded that she did not believe it would preclude that.

Deliberation

Vice Chair Stackhouse started with the two clear areas where a recommendation to Council is needed.

1. The speed at which the proposal is moving.
2. Provision 3.13.5(C)(5).

Member Sass asked about the language "at the director's discretion," and if the appeal process was still the same. Planner Axmacher clarified that language was added to remove these decisions from the normal appeal process. The reason is that these are very technical decisions in nature and that there is still an appeal process through the court. Staff feel this is a more appropriate decision-making body than City Council.

Member Shepard found that Attorney Potyondy's observation was persuasive in that there are multiple parties and strict rules with sharing information among the parties and that this can be time consuming. He agrees with Mr. Potyondy's response and the staff's position on the timing of this item. Member Sass respectfully disagrees. Member York is concerned with how fast this item has come through but knows this will become part of the Land Use Code and the Land Use Code is coming up for revision within the next few months. This gives us the opportunity to make corrections if needed. In looking at the redlines, they are not substantially different than they were before. Vice Chair Stackhouse confirmed with Member York that he is not concerned with the speed at which this item is proceeding. Member York confirmed.

Member Hafele feels that she can go either way on the speed. She commented that on one hand if the first version is given a soft release, it would get some expected testing and some revision. On the other hand, if you know that it is not quite right or are concerned that it is not quite right then, the speed seems too fast.

Member Stegner agrees with Member Hafele.

Vice Chair Stackhouse understands the pressure that city staff is under, but personally prefers more deliberation before implementing an item into code. It needs to be substantially ok. This leads to provision 3.13.5(C)(5). Hearing that there is similar language in code in another city, the more information is helpful. How do you keep cost effectiveness? What process is there when someone wants to opt out? She feels a little more time might be appropriate.

Member Sass commented that timing of when the adequacy determinations are made, he feels there should be more time spent understanding. Pulling these at the construction permit level seems late because developers are going to spend millions of dollars on building developments and then they may receive an adequacy determination that may not be in their favor. It could take months or years to get to the permit point.

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Member York understands Member Sass's point, he believes that the city wants to be far enough in the process that the developers have already made sure that they have this in place so that they do not have to come back and that they should not move forward if they are not in the process of developing the supplies. Member Hafele agrees that this is the logical order in which someone would propose a development. Is water adequacy something that would be reviewed in a conceptual review stage? Member Sass responded, not according to the way it is outlined, it comes in the permitting level. Vice Chair Stackhouse commented that the commission would always encourage people to work with their water district starting at the conceptual review stage to understand the water resources they need for the proposed development. Member Shepard asked if the DCP is a deadline, can an applicant precede this at anytime in the process? Planner Axmacher responded that with the new redlines and updates from the prior code draft, this was addressed. This was happening too late in the process. Everything was moved up to final development plan or basic development review with the ability to request to defer later in the process. There is also an option for large scale development that has an approved ODP or PUD overlay to do the entire water adequacy review with the first phase of development at final plan. Member Shepard asked if there was a stand-alone water adequacy process. Planner Axmacher responded that it would need to go concurrently with final development or basic development plan, through the development review process. Member Shepard asked why this is such a concern, he agrees with Member Sass that no one is going to spend civil engineering and utilities plans if they do not have the water supply figured out. Member Axmacher commented that she believes it is helpful in make the decision to have the development review documents as part of the package as well as what has been approved. Member Haefele assumes that someone proposing a development, whether they are doing a formal determination with the city, has already completed their own internal determination and feels confident in what they bring. Is this a reasonable thing to assume? Planner Axmacher responded that she cannot speak for a developer, but she feels staff would agree. Planning Manager Frickey commented on the stand-alone water adequacy piece, this would be a difficult thing to evaluate. What plan would staff be reviewing against if there was a stand-alone request? It is a risk to the developer to have to go back during the PDP phase, staff cannot go back and ask for issue another water adequacy determination if the project is not substantially different.

Vice Chair Stackhouse asked Member Sass if this addressed his concerns. Member Sass feels this is fast.

Vice Chair Stackhouse recapped the three areas of deliberation.

1. Does the Commission believe that it is a condition that more time should be allocated to this for the sake of certainty that there is a shared understanding between all parties?
2. Section 3.13.5(C)(5), because the language is impactful to other applicants and whether the Commission is satisfied with the research that has been done on the language and understand the implication of it.
3. The timing of the adequacy determinations, to get to certainty that the language is well understood and shared.

Member Sass does not feel it is a bad time to have this, he just wants to make sure the Commission understands the ramifications of their decision.

Member Shepard is sympathetic to Member Sass's point. He is leaning toward the timing suggested by Attorney Potyondy. He commented that one area of conversation was the Commission recommend to City Council that they take extra time between first and second reading. This has been done before.

Attorney Potyondy spoke to the timing. The Water Court Judge has made clear that this is going to proceed forward irrespective of what the city does here. The judge indicated that he will set a trial at the next status conference and that the trial date will likely be in March of 2025. The major disclosure deadlines start coming due in June of 2024. The primary risk that the city articulated previously was that Montava, the city and the other parties could potentially be working on a version of the augmentation plan for over a year before it gets amended due to the water adequacy process. This could result in lost effort and time. Vice chair Stackhouse commented that she is not clear. If timing takes an additional month so that all parties have a chance to look at this carefully and fully appreciate the ramifications, this would be the right thing to do. Would a short amount of time make much of a difference? Attorney Potyondy responded that with respect to the risk of having the parallel court process and water adequacy regulations perhaps not, but at the same time, he is not looking forward to telling the judge it is not on track to get done when hoped. Member Sass asked for clarification on the June 1st date. Attorney Potyondy responded that progress will have been made certainly if it is approved on first reading and the second reading was pushed back more than the standard two-weeks. This would not be as big of a deal. Attorney Yatabe commented and made a

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suggestion. With this currently set for May 16th Council first reading, the second reading would occur and the following regular meeting, June 6th. There is a possibility that the Planning and Zoning Commission could make a recommendation between the first and second reading. Staff at first reading could communicate to Council the substance of consternation over timing and the issues that the Commission is grappling with. Member Sass agrees and feels that they should not wait until the second reading. If the Commission understands that they send something to them stating that the Commission would like to have more review time to provide more constructive feedback. He would like further review time, another month.

Member Haefele commented that the Commissions job on this evening is to send a recommendation to adopt or not adopt this code language. She does not see where the Commission has anything other than to request that the Council make space between the first and second reading for additional input.

Member York understands the timing concern. But feels it would be more of a deal if there was more that the Commission was concerned about with the language and there is only one section of code that is of concern. He feels the Commission could send it to Council stating the concerns and would like more people to weigh in on it. Member Sass commented that the Commission could go more into the specifics. He does not feel there is an affordable option. He would like to understand what other non-potable options are available that are not the traditional methods?

Vice Chair Stackhouse is hearing the general discomfort and a lot of process questions, but that there is a leaning toward making a recommendation that the City Council not adopt the code at this time and instead instruct for two things to occur:

1. Allowing parties additional time to review code language.
2. Instruct staff to continue studying section 3.13.5(C)(5) to weigh both the clear issues raised by water companies with the effects of benefits of competition and what that means and the implications of the language in the longer term.

Member Hafele commented that the Commission is making an assumption that everyone is concerned about 3.13.5(C)(5), and she is not necessarily concerned with this. This piece of code is intended to enable competing with other water sources. The situation right now precludes those. Planner Axmacher responded that with the current situation, we would not have anything to evaluate a potential new provider against in order to confirm the adequacy. Vice Chair Stackhouse spoke Section 26.4 the concept of “incapable providing a reasonable level of service.” If the existing water company reviews a proposal, how do you define incapable of providing, she feels they are capable of providing. One may argue “provided at a cost-effective rate.” She feels there may be very few situations where existing water companies would have any reason to approve these proposals and there is no appeal process. Member Sass asked what happens when a water district that is not the City of Fort Collins with their deep portfolio says you need x amount of dollars to provide water, what do we do as a city to stop this from happening if we do not put strong provisions in place to allow that developer who is going to build those homes to build an affordable home. We should not be considering water to be an unlimited resource.

Member York understands some of the concerns, but without concrete examples of something negative from this area, he sees it as a reasonable step forward to start with.

Member Stegner is back and forth, but the concern is timing. She is leaning toward more time.

Member Shepard appreciates Member Sass’s perspective in the cost of not only the tap but bringing the raw water equivalent or the cash in lieu of real water right in ELCO, that inconsistency is maddening. City Plan did not envision $80,000 taps for a single-family detached home. Member Sass commented that it is now more than that in our GMA. This is concerning.

Member Shepard asked if is a circular argument if a developer seeks to go to a special district to be removed and gets denied by the Board, what happens then? Planner Axmacher responded that staff would not be able to approve their private proposal as adequate.

Member Shepard heard in the testimony from the water districts that neither the Special District Boards have an appeal process which is a system of governance that perhaps served us well during the dust bowl but does not

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serve us well in this day in age. Member York commented that he thought the appeal process was to go before the court. Attorney Yatabe responded that this is a legislative matter, different than a quasi-judicial matter where you are more bounded. Mr. Pletcher responded that during the course of the discussion, they verified that there is an appeal process above the district Board, it goes to the Board of County Commissioners. He was not aware of this prior to this hearing. This was new information for all involved. The Commission agreed that this is a critical piece of information. Member Sass agreed that it addressed some of his concerns, but are we sure? Planner Axmacher responded that staff attorneys advised that there would be an appeal process likely through court, this is different than what they were suspecting. Attorney Yatabe has not researched this topic, in fact it was not on his radar to be prepared with an answer and does not know if Attorney Potyondy has researched this issue.

Member Shepard asked that if knowing we have this information about an appeal process for the Special Districts, would this factor into any code revisions that staff would contemplate? Planner Axmacher responded that it provides a better understanding of the alternatives should a district not consent and that it might not be an absolute end to the process because it could be appealed and at that pint it could be deemed adequate depending on the outcome of that appeal. Member Shepard asked if a Board of County Commissioner decision can be appealed in a 106 District Court. Attorney Yatabe responded that it could depend on the nature of the action. Rule 106 action is for a quasi-judicial decision, he is guessing this might be, but he has not dug into the specifics of the nature of the decision.

Member Stackhouse made a motion that the Planning and Zoning Commission recommend that City Council not adopt the Proposed Water Adequacy Determination Amendment to the Land Use Code to:

- **Provide additional time for stakeholders to fully review Code language, especially with respect to timing of a water adequacy determination.**
- **Instruct staff to continue study of Section 3.13.5(C)(5) of the proposed Code to fully understand the ramifications of the language, for both water providers and potential applicants, and especially with respect to the applicant's ability to appeal a determination of a water supply entity.**

Member Shepard seconded. Member Shepard thanked staff for their hard work under a deadline and that hear learned about the appeal process**.** He supports the motion. Member York thanked everyone who came out and provided input. Member Sass thanked everyone who worked with this, he hopes that his concerns are not seen in a negative light and encourages people to participate. Member Haefele supports the motions because she agrees that having more time to review is important but feels these code changes help facilitate different innovative uses or sources of water while also still protecting entities that have some long-established investments in providing water. She does not have the concerns but agrees that water is the most confusing bit of the law. Vice Chair Stackhouse thanked everyone that came out. Knowing what it means is beneficial to everyone. We want to find the balance between preserving the investments that have been made by water companies but also creating the right economic incentives. **Vote: 6:0.**

For more complete details on this hearing, please view our video recording located here:
https://www.fcgov.com/fctv/video-archive.php?search=PLANNING%20ZONING

Other Business

None noted.

Adjournment

Chair Katz moved to adjourn the P&Z Commission hearing. The meeting was adjourned at 8:18pm.

Minutes respectfully submitted by Shar Manno.

Minutes approved by a vote of the Commission on: June 15, 2023.

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Paul Sizemore, CDNS Director

David Katz, Chair

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City of Fort Collins

Water Adequacy Determination Review
Land Use Code Update

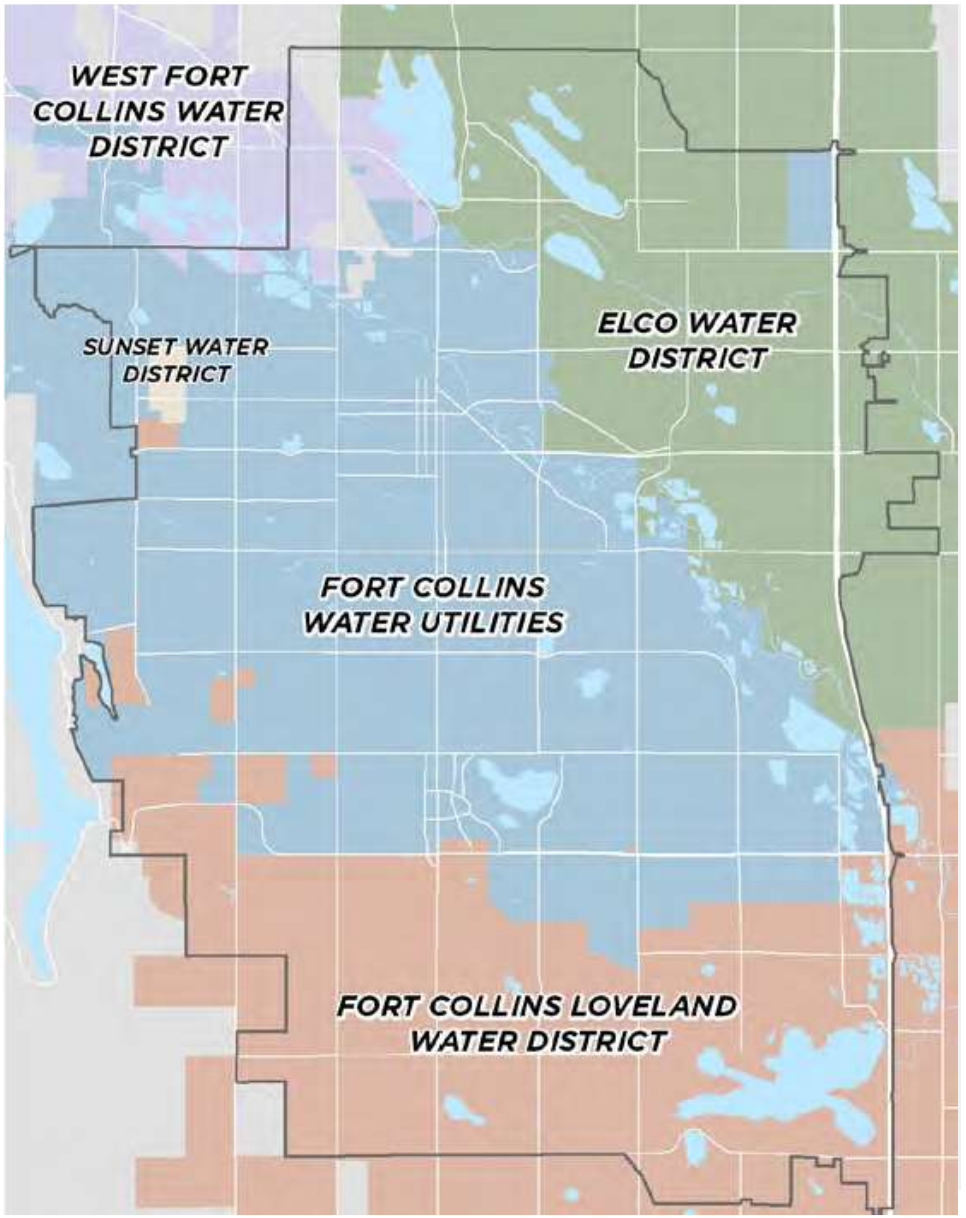
- Water Adequacy Determination Review Program supports the goals of
    - City Plan
    - Housing Strategic Plan
    - Climate Action Plan
- Viewed as a tool kit to look at water affordability and support sustainable development patterns
- Neighborhood Livability & Social Health - 1.6 - Align land use regulations and review procedures to guide development consistent with City Plan.

- Water is a critical resource and its cost and availably impact new development
- Existing review process
- Need for a more robust process
    - More complicated development
    - Potential for creation of new water providers

This review process is being proposed to further effectuate Section 29-20-301, et seq., C.R.S. which states:

> A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.

- Development occurs within the district boundaries of existing water providers
- Will Serve Letter issued by provider
    - Part of the building permit process



- Other Agency Review
  - Other agencies have the authority to review new providers
  - CDPHE
    - Requires public water systems demonstrate adequate capacity to construct, operate and manage the new public waterworks.
  - Water Court
    - There is also likely a role for Water Court to plan in validating claims for water under Colorado Law.

- Water Adequacy is a new code division, 3.13 that builds off of existing adequate public facilities section 3.7.3.
- Creates 3 determination processes for different providers:
    - Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District
    - Other potable water supply entities such as new private water supplies or metro districts
    - Non-potable water supply entities, such as irrigation water supplied by metro districts

- Timing
  - The state statute leaves the determination timing during the development process up to the purview of the local jurisdiction however they limit making the determination to **only once** unless something materially changes.
  - The draft code identifies the milestone in the development review process when this determination will be made for each of the three different processes.

- Approval
  - The determination of adequacy would be made administratively subject to a review and recommendation by a qualified water consultant.

Review Steps ↓ Review Phases →

Conceptual Design

Developing a conceptual plan is the best way to see how your ideas fit on the property. See the information below for ways to design a plan that meets your needs and City Plan.

Step 1. Research site constraints, opportunities and development requirements

Why Development Review
Understanding Zoning
Verify Permitted Uses
Identify Existing Features
Identify Missing Site Features
Requirement Options
What are my fees?

Historic? You must first consult with Historic Preservation staff if the site contains or is adjacent to designated or eligible historic structures, 50 years or older, to determine how historic review will be part of your review process.

Historic Preservation

Natural Features? An Ecological Characterization Study (ECS) may be required if there are streams, ponds, wetlands or other significant natural features on the site and specific protection requirements may apply.

Natural Features

Storm Protection? It's important to understand your project's stormwater detention, water quality, and potential flood protection requirements early in the process.

More Info

Compatible Design? How does my project fit into the surrounding area? See Examples

Step 2. Sign up for Conceptual Review or Preliminary Design Review

Meet with staff to review your proposed concept to prepare for a formal development review submittal (Step 3).

Should I sign up for Conceptual Review or PDR?

How do I sign up?

PDR Application Example | CR Application Example

Schedule LPC Conceptual Review: The Landmark Preservation Commission's design review subcommittee conducts this initial step if it applies to your project. Contact contact Historic Preservation staff at 970-221-6206 for questions and scheduling.

Schedule Building Code Presubmittal Meeting: All projects (except single-family and tenant finishes) require a pre-submittal code review meeting with Building Services. For questions and to schedule this meeting Call 970-416-2341 or 970-416-2640 for questions and to schedule meeting .

Step 3. Present your plan at a Neighborhood Meeting

A neighborhood meeting may be required before you proceed with your formal submittal. Contact your staff planner to make sure you meet the requirements and to coordinate the time, location and mailing.

Neighborhood Meeting Guide

0 - 20%* Complete

Pre-Hearing Review & Public Hearing

This phase is for all proposals that require a public hearing: PDPs, ODPs, Re-zonings and Annexations, and Major Amendments.

Step 4. Submit Application for formal review

Submit a signed development application, review fees, plans and other documents to the DRC. City departments and outside agencies review your plans.

What documents do I need to submit?

Step 5. Project Review*

Prior to hearing, staff's initial and subsequent reviews each take 3 weeks.

Projects affecting historic resources are presented to the Landmark Preservation Commission (LPC) prior to Step 6 to receive preliminary feedback and a hearing recommendation. This meeting can occur before your initial submittal (Step 4) or during staff review.

2nd Neighborhood Meeting - How did we do?

Some proposals may benefit from a second meeting after making revisions to receive feedback on plan changes prior to hearing.

Attend Staff Review Meeting

Staff meet to discuss their comments at staff review. You are welcome and encouraged to attend these meetings.

Resubmit Application

Contact your staff planner to confirm items needed for resubmittal.

Make Revisions

Ensuring that your project's revisions are clear and complete can reduce overall review time.

Step 6. Public Hearing

An Administrative Hearing Officer (Type 1) or the Planning and Zoning Board (Type 2) approves, conditionally approves, or denies the project. Move to Step 7 after you receive preliminary approval.

Public Participation

Is there an Appeal Process and how does it work?

50%* Complete

Final Plan Review

This phase is for all proposals that require a public hearing: PDPs, ODPs, Rezonings and Annexations, and Major Amendments. The formal review process starts here for BDRs and MAs; Steps 3-5 do not apply.

Step 7. Submit Final Plans

Submit either new final or revised final documents including final application, final review fees, plans and other documents to the DRC. City departments and outside agencies review your plans.

More about Final Review and documents

Step 8. Final Plan Review*

More construction detail is required during the final plan review phase. Staff's initial and subsequent reviews each take 3 weeks.

Projects affecting historic resources must receive a recommendation from the Landmark Preservation Commission (LPC) in a final review hearing before the development application will be approved (Step 9).

Pre-Mylar Review

You may coordinate minor corrections with DRC review staff prior to mylars (Step 9) if only minor corrections are needed after the scheduled Staff Review meetings.

Begin drafting any required off-site easements or other needed agreements.

Begin coordinating Engineering site permits, DCP or other (See Step 10).

Apply for Building Code Review for your proposed building or renovation, prior to full building permit review (see Step 12).

Contact your staff planner to apply.

Begin coordinating Development Agreement with your DRC Engineer after 1st round of final review.

Prepare escrows, bonds and other required securities.

*Staff review of Steps 5 and 8 can be combined prior to scheduling your hearing by providing an initial submittal that includes all final plan information. Combining these steps is not recommended for most projects.

80%* Complete

Final Documents Certified & Recorded

This step assures your rights and obligations to develop the project/property in accordance with the approved plans.

Step 9. Signing and Recording

Signing by the Owner/Developer:

- ☐ Submit a finalized and signed Development Agreement to your staff Engineer
- ☐ Submit Final Plan Mylars and other final documents with completed owner signatures.

Mylar submittal requirements and signing instructions

Final Documents include the following:

- One set of the planning documents;
- One set of the utility plans;
- One set of the plat;
- Any completed off-site easement dedications and filing fees needed.
- Paper copies of the completed/stamped utility plan mylars and drainage report are also required which are signed and stamped by your engineer. Contact your DRC Engineer for details.

Signing and Recording by the City:

- ☐ Staff collects department signatures on the final mylars;
- ☐ Final plat and DA are recorded at the County and final document copies are filed with the City.

Development Review 100% Complete

Site Permits and Public Improvement Inspections

No Development is permitted prior to permit issuance, permit fee payments; and security payments.

Step 10. Coordinate Site Permits and Inspections:

Types of permits include: Development Construction Permit (DCP), Encroachment Permit, Sidewalk or Drive Approach Permit, and a Floodplain Use Permit. Coordinate any needed permit applications for your site with your DRC Engineers. You can begin site work once your permit issued and erosion control is inspected while your building permit review process is completed (see Steps 11 and 12).

Install Erosion and Sediment Controls

An initial inspection is required after accepting erosion and sediment control measures/security payments and before land disturbing activities begin. More information and request an inspection.

Begin Site Work and Complete Public Improvement Inspections

Engineering Construction Inspectors work with the development and construction community to ensure compliance with City codes, standards, and specifications. Inspection services are provided on capital projects, subdivision development, and construction permit work. More information and request an inspection.

Street Tree Permit

A free permit is required before trees are planted or pruned within the public right-of-way. Contact Forestry for more information and to coordinate tree planting inspections.

Development Review 100% Complete

Full Building Permit Review

Steps 1 - 9 must be completed prior to full building permit submittal and review.

Step 11. Establish Land Records

This step prepares your project for full building permit review by providing all necessary information about your plans to agencies reviewing your project.

- The City must accept all Mylars and final documents for signatures and filing;
- Final AutoCAD drawing of plat and easements must be reviewed and accepted;
- GIS steps: plat and easement information entered into City database using AutoCAD drawing;
- Assign addresses (if not assigned);
- Import land records data into City database;
- Data is reviewed for accuracy and made available for full building permit review;
- The Development Review Center notifies you when this step is complete and the project is ready for full building permit submittal

Step 12. Full Building Permit Review

Building Services is the quality control and building safety expert for Fort Collins, ensuring your built project complies with the Municipal and Land Use Codes.

Building Services Online Resources:

Building Permit Submittal Requirements
Building Codes and Standards
Permit Applications and Forms
Permit Fees
Green Building
Green Codes and Energy Forms
Required Contractor Licensing
Construction Activity Reports

- ☐ Contact City Light and Power to coordinate the design and installation of electrical services and street lights while your permit is under review.
- ☐ Irrigation plans must be approved prior to issuance of full building permit. Irrigation plan submittal requirements and standards.
- ☐ You must pay all required fees prior to issuance of full building permit.
- ☐ Certain site work elements must be in place prior to issuance of a full building permit. F&F permits may be approved prior.
- ☐ Water meter/service line inspection and specs.
- ☐ Building Services issues Tenant Finish Permits.

Building Permit Issuance

Check the status of your Building Permit review

Building Plan Review 100% Complete

Building Inspections & Completion

Inspections identify any issues with construction as it nears completion. Other inspections continue after completion and C/O.

Step 13. Schedule and Complete Building and Site Inspections

City staff or an approved "special inspector" must perform prescheduled building inspections at various phases to ensure building code compliance in order to receive final project approval.

How to schedule a building inspection

Types of building inspections

Site and Landscape Inspections

Staff reviews your completed project in the field and determines if your landscape, site plan, and buffer elements were installed per the approved specifications prior to releasing any funds held in escrow.

Stormwater Facility Certification

Your engineer certifies that any stormwater improvements for your project were properly constructed, including detention ponds and water quality areas. Staff reviews your completed project in the field to ensure compliance prior to releasing any funds held in escrow.

More about this process

Receive Certificate of Occupancy or Letter of Completion

A Certificate of Occupancy (C.O.) is required for all new buildings prior to occupying the building. A Letter of Completion is issued for alterations and projects which do not significantly add to the building space. Other departments may require final approvals prior to issuing a Certificate of Occupancy.

Types of building inspections

C.O. Checklist

Floodplain Requirements

Maintaining Your Completed Project

City code requires that you keep your development properly maintained.

Requirements and tips

Development Review Flowchart

Updated 8-08-2018

City of Fort Collins

COMMON ACRONYMS:

BDR	Basic Development Review	LID	Low Impact Development
DA	Development Agreement	MA	Minor Amendment
DCP	Development Construction Permit	ODP	Overall Development Plan
DRC	Development Review Center	PDP	Project Development Plan
FDP	Final Development Plan	PDR	Preliminary Design Review

Proposed Evaluation Process – Existing Providers

- Keep similar process for existing providers
  - Will Serve Letter
  - Director can differ timing to building permit for review
  - Director as the decision maker
- Includes opportunities to
  - Review proposed updates to water supply plans by Council
  - Improve letters
  - Increase consistency between different providers

Proposed Evaluation Process – New Providers

- Evaluation criteria for new providers
  - Water Quality
  - Quantity of Water
  - Dependability of Supply and Supplier
    - Supply Resiliency
    - System Redundancy
    - Maintenance and Outages
  - Availability of Supply
  - Financial Sustainability of Supplier
    - Capitalization

Proposed Evaluation Process – New Providers

- Overall Standards Equivalent to Municipal Utility
    - Allows for a Modification of Standard for noncompliance
- Review Timing
    - At the time of Final Development Plan or Basic Development Review
    - Initial review anticipated to be done by a consultant
        - Cost agreement with applicant
- Final decision maker is CDNS Director

Non-potable Water Supply Entities

- Non-potable Entities
- Criteria:
    - Supply has enough quantity and;
    - Quality to support the associated uses such as irrigation for landscape.
- Review Timing
    - At the time of Development Construction Permit
    - Initial review anticipated to be done by a consultant
        - Cost agreement with applicant
- Final decision maker is CDNS Director

- Article Five, Division 5.1.2 – Definitions
- The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.
    - Adequate
    - Established Potable Water Supply Entities
    - Non-Potable Water
    - Non-Potable Water Supply
    - Other Potable Water Supply Entities
    - Potable Water
    - Water Adequacy Determination
    - Water supply entity
    - Water supply system

- Stakeholder Meetings:
  - Water Commission
  - West Fort Collins Water District
  - East Larimer County Water District
  - Fort Collins Loveland Water District
  - Hartford Homes/Bloom
  - HF2M/Montava
  - Polestar Gardens/Polestar Village
- Additional Feedback (no concerns):
  - Sunset Water District
  - Save the Poudre

- Requirement for new supply entities to petition out of existing water district or seek permission from existing water district.. There was both support and concern over this concept.
- The disparity between review criteria for established providers and new providers.
- The perception that the City was trying to regulate Special Districts through the review of a water supply plan or letter establishing the District's resources.
- A desire for more cooperation and consistency between all water suppliers.
- Concerns about duplicative review processes, especially for non-potable systems.
- Concerns over review costs
- Feedback that some metrics were vague.
- Feedback on the review timing proposed (FDP versus DCP) with a desire to complete the determination sooner.
- Feedback that there is a desire to be able to review new service for an entire development and then true up each phase at the time of final plan or BDR.
- Concerns on tight review timing for code update.

Staff is confident in the structure of the adequacy determination approach but incorporated feedback since the P&Z hearing that:

- Increased clarity
- Increased review efficiency
- Reduced duplication of efforts
- Provided additional review timing options
- Incorporated technical suggestions

Staff has identified 3 Decision Points for Council

1. Section 3.13.3 (A) Determination Timing
2. Section 3.13.4 (A) (1) Established Provider Review
3. Section 3.13.5(C)(5)(c) New Providers in Existing Service Areas

Alternatives outlined in subsequent slides.

In all three cases, staff is recommending to adopt the code as proposed and to not make any changes.

Decision Point 1 - Section 3.13.3 (A) Determination Timing

Entity	Current	Proposed	Deferred
Established	Building Permit	FDP/BDR	Building Permit
Other (New)	N/A	FDP/BDR	DCP All in Phase 1
Non-Pot	N/A	FDP/BDR	DCP

Alternatives:

- Move Earlier in Dev Review Process
- Move Later in Dev Review Process

Staff is recommending to adopt the code as proposed

Section 3.13.4 (A) (1) Established Provider Review

Requires Established Providers to provide a letter or water supply plan to Council outlining their water resources prior to submitting will serve letters.

Established Providers have indicated concerns with this approach

Alternatives:

- Remove the requirement
- Increase the level of required review

Staff is recommending to adopt the code as proposed

Section 3.13.5(C)(5)(c) New Providers in Existing Service Areas

- Provision requires new (other) providers to exclude from established providers service area or get their consent to operate.
- Potential new providers have indicated significant concerns with this approach.
- Established providers have indicated substantial support for the approach.

Alternatives:

- Remove the requirement
- Alter the code requirement

Staff is recommending to adopt the code as proposed

Planning and Zoning Commission recommends that Council not adopt the proposed code to allow for

- additional time to consider the impacts of the timing of the determination
- staff to further study section 3.13.5C(5) to fully understand implications for both applicants and supplier, particularly for an applicant's ability to appeal the decision of a district

Staff recommends the Council make a motion to approve the proposed Land Use Code changes.