Fort Collins City Council Work Session Agenda

6:00 p.m. Tuesday, November 7, 2022
Colorado Room, 222 Laporte Ave, Fort Collins, CO 80521

NOTICE:
Work Sessions of the City Council are held on the 2nd and 4th Tuesdays of each month in the Colorado Room of the 222 Building. Meetings are conducted in a hybrid format, however there is no public participation permitted in a work session.

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 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 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.

While work sessions do not include public comment, mail comments about any item on the agenda to cityleaders@fcgov.com

City of Fort Collins

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

City Council
Work Session Agenda

November 7, 2022 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

Colorado River Community Room
222 Laporte Avenue, Fort Collins

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

Carrie Daggett
City Attorney

Kelly DiMartino
City Manager

Anissa Hollingshead
City Clerk

CITY COUNCIL WORK SESSION
6:00 PM
(Rescheduled to Monday, November 7)

A) CALL MEETING TO ORDER

B) ITEMS FOR DISCUSSION

1. **1041 Regulations Project Update.**

   The purpose of this work session is to: 1) seek direction on the proposed timeline options; and 2) update Council of the version-two draft 1041 Regulations scope changes.

2. **Southeast Community Center and Aquatics Update.**

   The purpose of this work session is to provide an update on the options for the Community Capital Improvement Program (CCIP) funded Southeast Community Center with Outdoor Pool project.

3. **Overview of Public Nuisance Ordinance.**

   The purpose of this item is for Council to discuss a new public nuisance ordinance (PNO) that allows for a clearer, broader definition of public nuisance and adds new enforcement mechanism for abating public nuisances and chronic nuisance properties. The new PNO would allow staff to address the current community issues and nuisance situations more effectively.

C) ANNOUNCEMENTS

D) ADJOURNMENT

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November 7, 2022

WORK SESSION AGENDA ITEM SUMMARY

City Council

STAFF

Kirk Longstein, Senior Environmental Planner
Rebecca Everette, Planning Manager
Brad Yatabe, Legal

SUBJECT FOR DISCUSSION

1041 Regulations Project Update.

EXECUTIVE SUMMARY

The purpose of this work session is to: 1) seek direction on the proposed timeline options; and 2) update Council of the version-two draft 1041 Regulations scope changes.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. Do Councilmembers support extending the length of the moratorium to allow for final refinements to the code and additional outreach?

2. Do Councilmembers have feedback on the proposed scope to shift focus to greatest areas of impacts rather than major projects?

3. Do Councilmembers support exempting projects previously approved through Site Plan Advisory Review (SPAR), while still requiring 1041 permitting for projects not approved through SPAR?

BACKGROUND / DISCUSSION

Based on Council's discussion at the June 28 work session and continued public engagement, staff has updated the draft 1041 Regulations to incorporate additional feedback. The Regulations have been significantly revised since the initial draft was released in June 2022. Staff recognizes that Councilmembers still have questions about the current scope of the Regulations and the options presented, so this work session seeks additional Council guidance ahead of first reading.

What are 1041 Regulations?

1041 powers allow local governments to identify, designate, and regulate areas and activities of state interest through a local permitting process. The general intention of these powers is to allow for local governments to maintain their control over particular development projects even where the development project has statewide impacts. Areas and activities of state interest are specifically prescribed within HB74-1041.

Project History and Moratorium Scope

During a regular Council meeting held on May 4, 2021, Councilmembers adopted Resolution 2021-055, which directed staff to evaluate whether 1041 Regulations would help the City achieve its policy goals and to research the feasibility of adopting 1041 Regulations.

At a July 27, 2021 Council work session, staff presented lessons learned from communities that have adopted 1041 Regulations and entities with experience in applying for 1041 permits in other jurisdictions. Staff also presented a list of public projects recently administered through the Site Plan Advisory Review Process (SPAR) that could be considered "activities of statewide interest." Through this initial research and engagement, staff concluded that adopting 1041 Regulations could offer the City greater authority over large public infrastructure projects currently subject to the SPAR process. Additionally, it would help the City achieve several City Plan policy objectives, including:

- Direct development in a way that ensures compatibility between adjacent land uses;
- Minimize infrastructure and resource needs; and
- Protect historic and natural resources.

At the September 21, 2021 regular Council meeting, staff presented options that focused on development pressure the City may face in the mid-term (within 10 years). Council conducted a public hearing that designated the activities and imposed a moratorium on such activities with the caveat that prior to the second reading staff would perform additional engagement to identify which specific development projects could be impacted by a moratorium. Councilmembers also requested more detail around the procedural requirements for an exemption request to the moratorium.

At the October 19, 2021 regular Council meeting, staff returned for second reading on the designation ordinance and provided additional information on specific projects that could be impacted by a moratorium, and the procedural requirements for an exemption request to the moratorium. The designation ordinance was adopted on second reading and a moratorium imposed on development projects falling under the designated activities until December 31, 2022.

The scope of the Moratorium includes:

- Water and Sewer Systems that consist of pipelines designed for transmission of treated or untreated water or sewage that are contained within new permanent easements greater than 30 feet in width, or within new permanent easements greater than 20 feet in width that are adjacent to existing easements, or will use two or more parallel lines that are within 120 square inches of each other when viewed in cross-section
- Projects to upgrade existing water and sewer facilities, including repairing and/or replacing old or outdated equipment, or installing new equipment
- Interchanges associated with arterial highways located within City Natural Areas or parks

At the June 28, 2022 work session, staff presented an overview of key components of the version-one Draft 1041 Regulations, the outreach and research performed to date, next steps in the engagement process, and schedule for full adoption. The Regulations were developed with assistance from legal and community engagement consultants. Councilmember feedback included:

- Request to establish a time period for holding a pre-application process to align with the legislative intent of the 90-day period.
- Some concern over the term "significant" as being arbitrary and potentially too high of a bar.

- Support for a tiered review process and the overall permitting timeline as long as the Regulations are done right.
- Request to closely evaluate exemptions to make sure they do not result in loopholes.
- Request for responses to comments on the draft Regulations from Save the Poudre.
- Request for a balanced engagement process to ensure entities being regulated are not carrying more influence than those potentially affected by projects.

Timeline Considerations

In references to the memo circulated to Councilmember October 13, 2022, staff is prepared to make modifications to the version-two draft 1041 Regulations and extend the moratorium based on Council's direction. If first reading of the Ordinance is delayed as recommended, or if, on first reading, significant changes to the draft Regulations warrant additional public engagement or legal review, staff is prepared to present to Council an Ordinance during the November 15 regular session to extend the length of the moratorium by 3 months. The following options represent two timeline scenarios that may be appropriate based on Council direction:

Timing for Council Consideration	
Scenario 1	• Work Session – November 7 • First Reading – December 6 • Second Reading – December 20 • Moratorium expires December 31
Scenario 2	• Work Session – November 7 • Ordinance extending length of moratorium for 3 months – November 15 • First Reading – December or January • Second Reading – January or February

Proposed Scope of Regulations

For easier reference by Councilmembers, staff has prepared a summary document that provides a snapshot of the major revisions between version one and version two of the draft 1041 Regulations. (See Policy Comparison)

Per Council's direction, staff has proposed the following scope changes to the Fort Collins 1041 permitting program. The organization and numbering align with the Land Development Code standards adopted by Council on first reading on October 18, 2022.

Version One of the draft Regulations included the types of projects described in the designation ordinance, and would apply to projects throughout the City (edge to edge and not in specific geographic locations):

1. New arterial highways, interchanges, and collector highways.
2. Expanded arterial highways, or collector highways that would result in either:
    a. An increase in road capacity by at least one vehicle lane; or
    b. Expansion or modification of an existing interchange or bridge.
3. New wastewater treatment plants.
4. New or extensions to major domestic water and sewage treatment systems.

Version Two includes the same activities of interest (as designated previously and noted above) but is limited to a narrower geographic scope, slightly modified from the scope of the moratorium, as follows:

1. Projects otherwise within the scope of the Regulations that either:

    a. Are located on (or cross through) an existing or planned future City Natural Area or park, whether developed or undeveloped; or

    b. Are located on (or cross through) City building sites or other non-right-of-way property owned by the City, whether developed or undeveloped.

    For Council discussion, this version also includes within its scope projects that:

    c. Are located within an existing or potential future Natural Habitat Buffer Zone, as defined in the Land Use Code; or

    d. Have potential to adversely impact historic resources.

Natural Habitat Buffer Zones

Development standards related to the protection of natural habitats and features are included within Section 3.4.1 of the current Land Use Code (Section 5.6.1 of the NEW Land Development Code). The standards apply if any portion of a development site is within five hundred (500) feet of a natural habitat or feature identified on the City's Natural Habitats and Features Inventory Map, or if any natural habitats or features with significant ecological value are discovered during site evaluation associated with the development review process. The Code prescribes protective buffers around specific features in addition to a list of performance standards that must be met by the development project.

The inclusion of natural habitat buffer zones within the scope of the 1041 regulations follows a similar methodology prescribed by the Land Use Code since 1997. For example, if a project is covered by a 1041 regulatory designation and is located within 500-feet of a natural habitat feature identified by the inventory map, the applicant must provide an Ecological Characterization Study (and any additional environmental impact analysis) during the 1041 pre-application review. If a feature is not included on the natural habitat inventory map, and a third-party ecological characterization study finds a previously unidentified feature, staff would consider these newly identified features within its 1041 pre-application review.

Staff recommends using the Natural Habitats and Features Inventory Map: 1.) It narrows the scope of the 1041 permitting process to protect high value habitat previously identified through a focused natural resources inventory; and 2.) provides more predictability for 1041 applicants through the initial pre-application FONAI process; and 3.) assists staff and applicants in the identification of alternative locations with diminished adverse impact.

The *Natural Habitats and Features Inventory Map* was last updated in the year 2000 and does not fully capture existing natural resources throughout the City. If Council supports including Natural Habitat Buffer Zones in the scope of the 1041 Regulations, an update to the map would be required as part of the implementation of the Regulations. A supplemental appropriation may be necessary to fund this work.

Consideration for Local Historic Resources

The proposed scope changes within version two of the draft 1041 Regulations also aligns with the Historic and Cultural Resources Development Standards in Section 3.4.7 of the current Land Use Code (Section 5.8 of the NEW Land Development Code). Inclusion of these standards within 1041 Regulations mirrors the City's existing requirements for private developers to 1041 designated project types that are typically reviewed via the Site Plan Advisory Review (SPAR) process.

Since the draft 1041 Regulations were designed to apply largely to water, utility and transportation projects, a key reason for inclusion of historic resources in these Regulations is that water and utility projects are likely to effect areas of high concern either for archaeological resources or places of cultural significance to indigenous peoples, such as water projects along or near the Poudre River or stream corridors identified by the Natural Habitats and Features Inventory Map. The presence of archaeological resources is difficult to predict, both because these resources are below the ground and because access to locations of already-identified archaeological sites is protected under federal law. Under the existing federal process for cultural resource protections, professional archaeologists are hired to clear a site before construction and are on-site as monitors during excavation. At present, for developments that require City permits, the City uses a 200 foot buffer from waterways as a metric for archaeological monitoring for other permitted excavation types, such as small cell wireless facility installation.

Since archaeological resources are the main historic resource of concern for 1041 review it is important to note that, in most cases, projects can still proceed if they discover archaeological resources in their project areas. Typical practice (established in federal permitting) is to avoid archaeological resources if possible, or if not possible, pause construction to excavate those identified archaeological sites, all at the project sponsor's expense.

For infrastructure projects that have a federal nexus (i.e., federally-funded CDOT highway projects, Army Corps permitting for improvements along the Poudre River, etc.), a similar cultural resource review is already required under the National Historic Preservation Act along with other federal and state laws/regulations. These laws typically do not require consideration of properties determined historically significant by the municipality (the standard for consideration is generally eligibility for the National Register of Historic Places). The main benefit of adding this type of process at the local level is to ensure that City Landmarks and Landmark-eligible properties, not just those that qualify for federal historic designation, are considered in infrastructure project reviews within city limits. Existing federal and state laws and project review processes do not require protection for locally-designated City Landmarks.

Threshold Size for Infrastructure Subject to 1041 Regulations

The version two draft of the 1041 regulation scope includes a reference to service lines and distribution lines that fall within the definitions of designated activities. However, project size (e.g., pipe diameter) is not the best proxy for environmental impacts. Version two replaces project size thresholds with impacts to City properties, natural habitat features and historic resources – locations where adverse impacts are most likely to occur.

For example, gravity-fed wastewater pipes could be laid fairly deep but not be of a "large" diameter. The depth of the pipe dictates the impact because the project would require deeper trenches, likely have more spoil piles of excavated material, widened easements for work, larger machinery, etc. Using water projects as an example, the system can be pressurized, so a transmission line could be reduced in diameter through pumps. Based on public feedback, the revised scope of the Regulations intends to focus on impacts to specific resources, rather than project design attributes like pipe size or easement width.

Site Plan Advisory Review (SPAR) and 1041 Regulations

The Site Plan Advisory Review (SPAR) process requires the submittal and approval of a site development plan that describes the location, character and extent of improvements to parcels owned or operated by public entities. 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. The SPAR review criteria are more general than the Land Use Code standards for private projects, and a degree of interpretation is necessary in reviewing a given project. SPAR is often referred to as a "Location, Character, and Extent" review. Once reviewed, staff provide a recommendation and the Planning and Zoning Board consider a SPAR approval or disapproval of an application in a public hearing held within sixty (60) days after receipt of the application under Section 31-23-209, C.R.S. If disapproved, the SPAR decision may be overturned by the governing body of the public agency (by a 2/3 majority vote).

The main difference between 1041 Regulations and SPAR is the City's advisory versus regulatory role. Additionally, SPAR projects are not evaluated for compliance with Land Use Code standards per se, as in other types of development, and it should be noted that 1041 review standards require more rigorous documentation and analysis than the materials required through a SPAR process.

Based on public feedback, staff presents the following options for Council to consider:

- Option 1 – Exempt all projects previously reviewed through the SPAR process.
- Option 2 - Exempt projects previously approved through the SPAR process.
- Option 3 – No exemptions for previously reviewed SPAR projects.

NEXT STEPS

- Recalibrate timelines for adoption based on Council feedback, including an extension to the moratorium if necessary.
- Seek additional public input on version two of the draft 1041 Regulations, as necessary.
- Schedule first reading of the 1041 Regulations.

ATTACHMENTS

1. Summary of Draft 1041 Regulations – Comparison of Versions
2. Public Engagement Summary
3. Natural Habitats and Features Inventory Map
4. Natural Areas Map
5. Designation Ordinance
6. Public Comment – NISP and Northern Water
7. Public Comment - Greeley
8. Presentation

1041 Parameters	Version 1 (June 2022)	Version 2 (October 2022)
Pre-Submittal Required	No specific time requirement	adds a 28 day requirement for Director to make FONAI determination and a 60 day time frame for staff to review and deem application complete
Using Term Significant	Used in various standards and as a way to differentiate projects subject to the regulations	Reworking of the FONSI to become the FONAI or finding of negligible adverse impact. 1.) Change from a significant impact standard to a review of whether there are adverse impacts of any kind. To the extent there are adverse impacts, mitigation can compensate for the adverse impacts in order to meet a standard.
IGAs	Provided as an option to reduce procedural burden on applications	Section Removed
Thresholds	No specific thresholds	Narrowing of the scope of projects to which the 1041 regulations apply. They include: City Parks, Natural Areas, Natural Habitat Buffer Zones, Cultural resources
Exemptions	Used current definition of development to determine which projects would be subject to regulations. Definition contains exemptions for CDOT and utility work within the ROW or existing easements	update the definition of development to include work with right away and existing easements; included a new exemption for private development required to perform utility or roadwork as part of development project subject to LDC
Arterial & Collector Hwys, Interchanges		Additions to the Definitions: 1. Are located on (or cross through) an existing or planned future City natural area or park, whether developed or undeveloped; or 2. Are located within an existing or potential future buffer zone of a natural habitat or feature, as defined in the Land Use Code; or 3. Have potential to adversely impact historic resources.
New Water & Sanitation		
Water Extensions		
Decision Maker	Administrative permit and Full permit	Eliminated the administrative permit; made City Council the sole decision maker
Financial Security Required	Yes	1.) Language that allows the City to retain third party experts to assist in review at the applicant's cost. 2.) More detailed language regarding inspection and monitoring of projects.

PUBLIC ENGAGEMENT SUMMARY

Over the last ten months, staff sought input from community partners on 1041 regulations for water and highway projects that are (1) contextually appropriate to Fort Collins, (2) provide predictability for developers and decision makers, and (3) provide adequate guidance for staff review and implementation of permits.

Throughout the time since the release of the initial draft code in June to the present, in addition to organized outreach events, staff has met or spoken by phone at length with individual stakeholders, both in support of and opposed to the regulations, to discuss questions and feedback in great detail. Staff has listened deeply and worked to find balance among the perspectives and concerns expressed by various individuals, organizations, utility providers, agencies, developers, Boards and Commissions, and Northern Colorado communities. Significant revisions in the current draft regulations are in direct response to the insights and information gathered through these conversations.

The following table summarizes feedback from public comments, an anonymized survey, 1:1 discussions and focus group meetings as they relate to various community priorities:

Community Feedback Themes	
Housing Resilience	• Value for natural habitat features that increase community wellbeing through benefits like clean air, landscape aesthetics, and flood control. • Concerns that environmental regulation can impact the supply of housing if they increase the amount of time necessary to build housing units.
High Performing Government	• Value for transparency, access to more information and opportunities to address inequities. • Concerns that additional permitting requirements are redundant, create uncertainty, project delays, require additional time, and investment in City-specific mitigation requirements.
Economic Resilience	• Preference for local control of large projects to ensure community-wide benefits are realized. • Importance of balancing the burdens of bureaucracy and the demands of a fast-growing community.

City Council:

The current draft of the regulations was structured around the feedback received from City Council at the June 28 Work Session and subsequent input. The following feedback themes were shared by Council during the Work Session and addressed by staff.

City Council Feedback	How has Staff Addressed Feedback?
Create right guardrails for 1041 applicability.	Staff have clarified ordinance text to align more closely with the thresholds from the moratorium ordinance, while still protecting natural habitats and features from adverse impacts.
Review exemptions to ensure they don't result in loopholes.	
Concern over the term "significant" as being arbitrary and too high of bar.	Staff have removed the term significant and are relying on the definition of "adverse impact" and full mitigation for permit issuance.
Support tiered review process as long as it works.	Staff have removed the administrative review and is keeping the" Finding of Negligible Adverse Impact" concept so that a relief valve is provided for smaller projects and City Council is the sole decision maker on larger projects requiring permits.
Establish time period for pre-application process.	Maximum time periods have been incorporated into the pre-application process.

Focus Groups:

Focus groups played a key role in reviewing Code language and providing specific feedback that staff have addressed in an updated draft regulations. The focus groups included:

- Colorado Department of Transportation (CDOT) staff
- Environmental advocacy group representatives
- Economic and Regional representatives (homebuilders, elected officials, Chamber of Commerce, CSU)
- Water and Sanitation Providers
- Boards and Commissions representatives

Stakeholder Feedback	How has Staff Addressed Feedback?
How does 1041 lead to a better project outcome and enhance overall community benefits?	Review criteria include the City's Natural Habitats and Features Inventory Map, which aligns with the community's values to preserve natural resources.
The permit program introduces an administrative burden that adds time and cost.	Updated review criteria, articulating the role of mitigation, and aligning with existing City maps of natural habitat features intend to provide additional certainty for agencies planning a multiyear infrastructure project.
Ambiguous approval process adds project uncertainty.	Staff have removed "tiered review" so that City Council is the sole decision maker.
1041 is redundant with multijurisdictional requirements and is out of sync with federal funding opportunities.	The focus of the scope and review criteria seeks to address gaps in other jurisdictional procedures. For example, the city can ensure protection and mitigation of resources that may not be protected by County, State or Federal regulations.
Regs should allow more flexibility and exemptions	Updates to the City's definition of development intend to create certainty and narrow the scope of projects covered under the 1041 regulations.
1041 regs should be applied to private development and not public agencies.	Fort Collins Utilities is a public agency leading by example and partnering with City Planning staff to ensure regulations align with the service delivery commitments of Utilities and the values of the community.
Uncertainty around the use of Intergovernmental Agreements in lieu of permitting.	The current draft removes this provision.
Requirements for water conservation and other programs in the system of an applicant water provider go beyond the City's appropriate reach.	The current draft removes requirements related to the applicant's system that are not physically within the scope of the regulations.

Public Participation Activities:

Throughout 2022, the general public was invited to participate and engage through online activities, public events and one-on-one meetings with City staff. Throughout the engagement process key questions included:

- Parameters, Exemptions, and Thresholds
  - How do staff determine what project categories are regulated?
  - How does the program provide a clear review process?
- Review Criteria
  - What are the parameters of an adverse impact?
- Application requirements
  - What is needed to determine an application complete?
- Application review process
  - Who is the decision maker
  - What is the appeals process?

Public Participation	Dates			
Open House/Public Forum		2/23/2022 (AM & PM)	8/30/2022	9/1/2022
Online Survey		2/1/2022	8/30/2022	
Online engagement – OurCity; fcgov.com		Ongoing		
Press Release	9/2021	2/2022	8/2022	

Boards and Commissions	Dates				
Water Board	9/16/2021		8/18/2022		11/17/2022
Transportation Board					11/16/2022
Planning and Zoning Commission	8/13/2021	2/11/2022	6/10/2022	10/14/2022	11/17/2022
Land Conservation and Stewardship Board	9/8/2021	2/9/2022	6/8/2022	10/12/2022	
Chamber of Commerce	9/17/2021		6/24/2022	10/28/2022	
Natural Resources Advisory Board	9/16/2021	2/16/2022	6/15/2022	10/19/2022	11/16/2022
Economic Advisory Board					10/19/2022

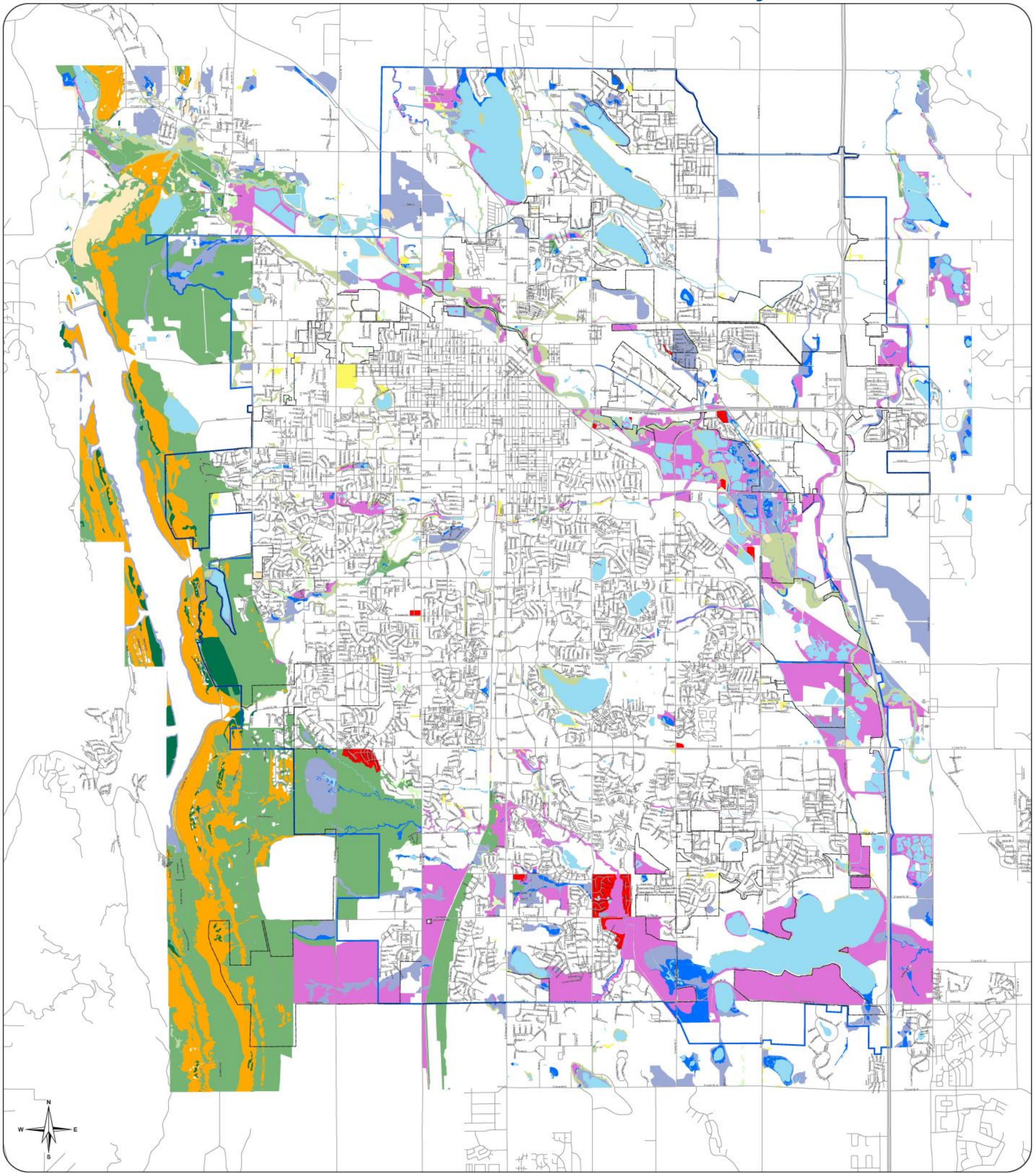
Focus Group meetings	Dates		
Water and Sanitation providers	2/3/2022	8/1/2022	8/18/2022
Environmental	2/4/2022	8/2/2022	8/4/2022
Economic/Municipal	2/3/2022	8/2/2022	
Colorado Department of Transportation	1/28/2022	8/5/2022	
Boards and Commission liaisons	2/8/2022	8/1/2022	8/4/2022
Larimer County	1/23/2022	2/8/2022	

Stakeholder List

The following list details the interested parties that have been directly engaged by staff at several times during the process. Outreach and engagement has included the activities described above, as well as frequent email updates, newsletter communications, and individual meetings.

Air Quality Advisory Board
American Whitewater
Boxelder Sanitation
Chamber of Commerce
City of Greeley
City of Windsor
Colorado State University
Colorado State University Research Foundation (CSURF)
CSU Graduate Student
Ditesco
East Larimer County Water District (ELCO)
Fort Collins-Loveland Water District (FCLWD)
Fort Collins Sustainability Group
Fort Collins Utilities
Hartford Homes
Land Conservation and Stewardship Board
Larimer Alliance
Larimer County Planning Staff
League of Woman Voters
Natural Resources Advisory Board
North Front Range Water Quality
North Weld County Water District
Northern Engineering
Northern Water
Planning and Zoning Commission
Save the Poudre
Sierra Club
South Fort Collins Sanitation District
SpacePreservation.org
TB Development Group
Transportation Board
Trout Raley Law
White Bear Ankele Law

City of Fort Collins
Natural Habitats and Features Inventory



CITY OF FORT COLLINS
GEOGRAPHIC INFORMATION SYSTEM MAP PRODUCTS

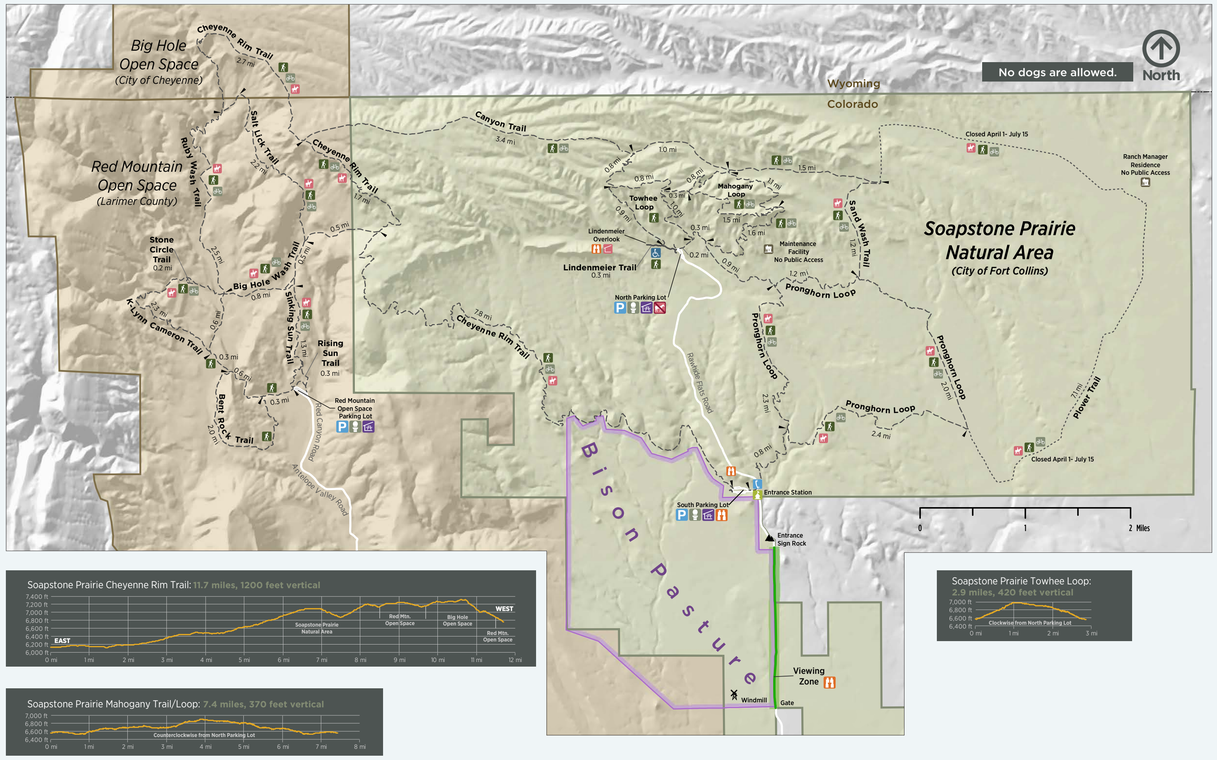
City of Fort Collins GIS

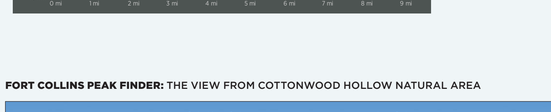
Printed: October 02, 2015

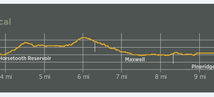
SOAPSTONE PRAIRIE NATURAL AREA

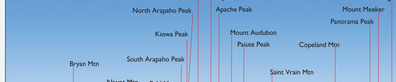
DIRECTIONS:

From Fort Collins, travel north on State Hwy 1 / Terry Lake Road. Turn left (towards Waverly) on County Road 15. Travel north and turn right onto Rawhide Flats Road and take it to the entrance station.









KNOW BEFORE YOU GO

Natural areas are popular local and regional destinations! When the parking lots are full, the carrying capacity has been reached. Go to an alternate site or come back another time. Weekends and holidays are busiest. Do not park anywhere other than in designated spots.

ACCESSIBILITY

Need to know more about trail difficulty and accessibility? Visit *fcgov.com/naturalareas/accessibility* for details.

CHECK HERE FIRST:

- *fcgov.com/trailstatus*
- *trails.colorado.gov*

STEWARDSHIP NEEDED

Natural areas can be loved to death. Show you care for these treasures by following regulations which protect you and the natural areas.

- Keep dogs on-leash and pack out dog waste (at sites where dogs are allowed).
- Leave no trace by removing trash and food scraps.

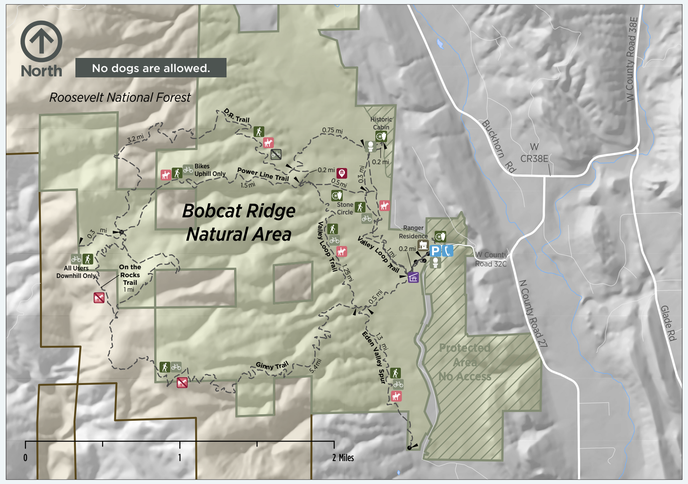
WHY CLOSURES?

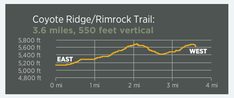
Natural areas are closed due to wet and muddy conditions on the trails. Muddy trails leave visitors with no good choices: going around the mud widens the trail and going through the mud damages the trail. Please respect the closures and try the City's paved trail system instead.

BOBCAT RIDGE NATURAL AREA

DIRECTIONS:

From Fort Collins, take Harmony Road / CR 38E west to Masonville. Turn south on CR 27 and west on CR W32C to the parking lot.

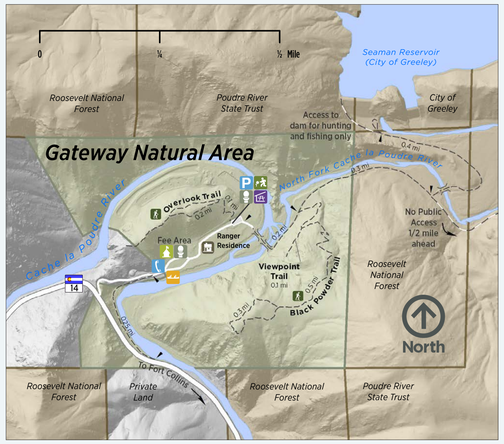


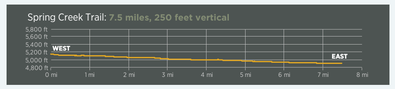


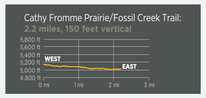
GATEWAY NATURAL AREA

DIRECTIONS:

From Fort Collins, travel north on Hwy 287 / College Ave., turn west onto Hwy 14 and take it about 5 miles to Gateway Natural Area.
Fee: $7, or annual pass available.







FORT COLLINS PEAK FINDER: THE VIEW FROM COTTONWOOD HOLLOW NATURAL AREA

THE TREKKING ORDER:

Please mind your trail manners. Bikers yield to horses and hikers. Hikers yield to horses.

NATURAL AREA	OPEN 5 A.M. - 11 P.M.	PARKING	ACCESSIBLE	HIKING TRAILS	OFF-TRAIL HIKING	BIKING TRAILS	HORSE TRAILER PARKING	EQUESTRIAN TRAILS	DOGS ON LEASH	NON-MOTORIZED BOATING	FISHING	INTERPRETIVE SIGN(S)	PICNIC FACILITIES	RESTROOMS	DESIGNED FOR KIDS	IMPORTANT BIRD AREA
ARAPAHO BEND*	●	P	♿	🥾	H	🚲		🐎	🐕	🛶	🎣	ⓘ		🚻		🐦
BOBCAT RIDGE Open dawn to dusk		P	♿	🥾			🚛	🐎				ⓘ	🪑	🚻		
BUTTERFLY WOODS	●		♿	🥾		🚲		🐎	🐕							🐦
CATHY FROMME PRAIRIE	●	P	♿	🥾		🚲	🚛	🐎	🐕			ⓘ		🚻		
CATTAIL CHORUS	●		♿	🥾		🚲			🐕			ⓘ			🚸	🐦
COLINA MARIPOSA	●			🥾					🐕							
COTTONWOOD HOLLOW	●	P		🥾								ⓘ		🚻		🐦
COYOTE RIDGE	●	P	♿	🥾		🚲	🚛	🐎				ⓘ		🚻	🚸	
EAGLE VIEW	NOT YET OPEN TO THE PUBLIC.															🐦
FISCHER	●		♿	🥾	H	🚲		🐎	🐕				🪑			
FLORES DEL SOL	NOT YET OPEN TO THE PUBLIC.															
FOSSIL CREEK RESERVOIR Open dawn to dusk		P	♿	🥾								ⓘ	🪑	🚻		🐦
FOSSIL CREEK WETLANDS	●		♿	🥾		🚲			🐕							🐦
GATEWAY Open dawn to dusk		P	♿	🥾				🐎	🐕	🛶	🎣	ⓘ	🪑	🚻	🚸	
GOOSE HOLLOW	●			🥾	H	🚲		🐎	🐕	🛶	🎣					
GUSTAV SWANSON	●	P	♿	🥾	H	🚲		🐎		🛶	🎣	ⓘ				🐦
HAZALEUS	●		♿	🥾		🚲	🚛	🐎								
HOMESTEAD	●		♿	🥾		🚲		🐎	🐕		🎣	ⓘ				🐦
KESTREL FIELDS	NOT YET OPEN TO THE PUBLIC.															
KINGFISHER POINT	●	P	♿	🥾	H	🚲		🐎	🐕	🛶	🎣	ⓘ				🐦
MAGPIE MEANDER	●	P	♿	🥾		🚲		🐎	🐕		🎣	ⓘ		🚻		🐦
MALLARD'S NEST*	●		♿	🥾	H	🚲		🐎	🐕		🎣					
MAXWELL	●	P		🥾		🚲	🚛	🐎	🐕			ⓘ		🚻		
MCMURRY	●	P		🥾	H	🚲		🐎	🐕	🛶	🎣	ⓘ				🐦
NORTH SHIELDS PONDS	●	P	♿	🥾	H	🚲		🐎	🐕	🛶	🎣	ⓘ	🪑	🚻		🐦
PELICAN MARSH	●	P	♿	🥾		🚲		🐎	🐕			ⓘ		🚻		
PINERIDGE	●	P	♿	🥾		🚲	🚛	🐎	🐕	🛶	🎣	ⓘ	🪑	🚻		
PRAIRIE DOG MEADOW	●	P							🐕							
PROSPECT PONDS*	●	P	♿	🥾	H	🚲	🚛	🐎	🐕	🛶	🎣	ⓘ	🪑			🐦
PUENTE VERDE*	●			🥾		🚲			🐕							
RED FOX MEADOWS*	●	P	♿	🥾	H	🚲	🚛	🐎	🐕			ⓘ		🚻		
REDTAIL GROVE	●		♿	🥾		🚲		🐎	🐕							
REDWING MARSH*	●	P		🥾	H	🚲		🐎	🐕		🎣					
RESERVOIR RIDGE Gated parking lots open dawn to dusk	●	P	♿	🥾		🚲	🚛	🐎	🐕			ⓘ	🪑	🚻		
RIVERBEND PONDS	●	P	♿	🥾	H	🚲	🚛	🐎	🐕	🛶	🎣	ⓘ		🚻		🐦
RIVER'S EDGE	●	P		🥾	H	🚲		🐎	🐕		🎣					🐦
ROSS*	●	P	♿	🥾	H	🚲		🐎	🐕							
RUNNING DEER	●	P	♿	🥾								ⓘ		🚻		🐦
SALYER	●	P	♿	🥾	H	🚲		🐎	🐕		🎣	ⓘ				🐦
SOARING VISTA	●	P		🥾		🚲			🐕							
SOAPSTONE PRAIRIE Open dawn to dusk, March-November.		P	♿	🥾		🚲	🚛	🐎				ⓘ	🪑	🚻		
SPRINGER*	●		♿	🥾		🚲		🐎	🐕							🐦
THE COTERIE	●		♿	🥾		🚲		🐎	🐕							
TANGLEWOOD*	●			🥾	H				🐕							
TOPMINNOW	NOT YET OPEN TO THE PUBLIC.															
TWO CREEKS	●		♿	🥾		🚲		🐎	🐕							
UDALL*	●			🥾		🚲		🐎	🐕			ⓘ				🐦
WILLIAMS	●		♿	🥾		🚲		🐎	🐕							🐦

*Co-owned and/or co-managed with Fort Collins Utilities for flood control, water quality, and wildlife habitat.

CARE FOR THE NATURAL AREAS

- Dogs are not permitted on some natural areas; check the chart above. Dogs must be on a leash.
- You may not possess or consume alcohol.
- A valid fishing license from Colorado Parks and Wildlife is required.
- Openly carrying a firearm is prohibited. Firearms are permitted with a valid concealed carry permit.
- eBikes are only allowed on paved trails.
- No camping, motorized vehicles, fires, or fireworks.
- Collecting is not allowed.
- Groups over 15 people, research projects, and commercial uses require a permit.
- No smoking in natural areas, on trails, or in any city-owned facilities.
- Horses must stay on trails or within 10 feet.

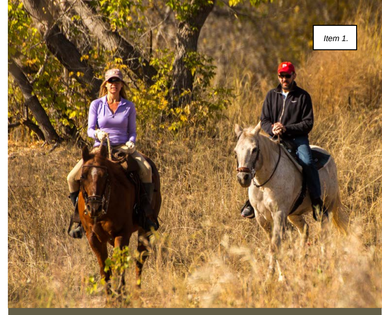
Complete regulations at *fcgov.com/naturalareas*

PLAY IT SAFE

BE SNAKE AWAKE!
If you encounter a rattlesnake, stop, back up, and warn others in the area. Wait for it to move away or walk around it to give it room to escape. If a snake bites you, call 911. Keep calm and avoid elevating your heart rate.

LIGHTNING — WATCH THE WEATHER.
Avoid afternoon outings when lightning is most frequent. Seek safety in vehicles, buildings (not picnic shelters, restrooms, or sheds), or low areas such as dry creek beds.

BE SAFE AROUND THE RIVER.
It's best to stay out of the river.
The water is always cold, and currents and levels change quickly.



CITY OF FORT COLLINS NATURAL AREAS

Yours to Explore

NATURAL AREAS MISSION:

To conserve and enhance lands with natural resource, agricultural, and scenic values, while providing meaningful education and appropriate recreation opportunities.

Thank you! Every time you shop in Fort Collins or Larimer County, a percentage of your sales tax dollars goes towards conserving natural areas. You are contributing to land conservation, wildlife habitat, trails, and visitor services. That's quite a buy!

FORT COLLINS NATURAL AREAS

Contact Us

Natural Areas Department 970-416-2815
Rangers 970-416-2147
Life-threatening emergency 911
- *fcgov.com/naturalareas*
- *fcgov.com/naturalareas/status*
- *naturalareas@fcgov.com*

Volunteer Program
- Natural Areas Volunteer Coordinator - tbaldu zzi@fcgov.com

Free Nature Hikes and Educational Activities
- fcgov.com/register

Auxiliary aids and services are available for persons with disabilities. V/TDD: Dial 711 for Relay Colorado.
Asistencia disponible en español a ningún costo.

20-22264 JULY 2022

ENJOY AND TREASURE

City of Fort Collins Natural Areas

NATURAL AREAS MAP

Natural Areas Map

City of Fort Collins Natural Areas

To Gateway Natural Area

To Soapstone Prairie Natural Area

Butterfly Woods

Reservoir Ridge

Kestrel Fields

North Shields Ponds

Redwing Marsh

Magpie Meander

Goose Hollow

McMurry

Salyer

River's Edge

Gustav Swanson

Puente Verde

Udall

Homestead

See Inset Below Left

Williams

Springer

Kingfisher Point

Cattail Chorus

Riverbend Ponds

Red Fox Meadows

Mallard's Nest

The Coterie

Cottonwood Hollow

Fischer

Maxwell

Prospect Ponds

Running Deer

Ross

See Inset Below Right

Tanglewood

Pineridge

Arapaho Bend

Topminnow

Lory State Park
970-493-1623

Horsetooth Mountain Open Space (Larimer County)
970-498-7000

Horsetooth Reservoir

Cathy Fromme Prairie

Redtail Grove

Two Creeks

Hazaleus

Prairie Dog Meadow

Eagle View

Colina Mariposa

Fossil Creek Wetlands

Fossil Creek Reservoir

Coyote Ridge

Pelican Marsh

Flores del Sol

Soaring Vista

Bobcat Ridge

Cache la Poudre River Corridor Natural Areas (North)

Cache la Poudre River Corridor Natural Areas (South)

0 ½ 1 Kilometer
0 ¼ ½ 1 Mile

0 ½ 1 2 3 4 Kilometers
0 ½ 1 2 3 Miles

North

CITY OF FORT COLLINS NATURAL AREAS

- Parking
- Restroom
- Dog Park
- Natural Areas Building
- Cultural Interest Site
- Museum, Recreation Centers, and Facilities
- Rock Climbing
- Designed for Kids
- Paved Trail
- Natural Surface Trail
- Seasonal Use Trail
- Fort Collins Natural Area
- Open Space/State Park
- Park

ORDINANCE NO. 122, 2021
OF THE COUNCIL OF THE CITY OF FORT COLLINS
DESIGNATING CERTAIN ACTIVITIES AS MATTERS OF STATE INTEREST AND IMPOSING A MORATORIUM ON THE CONDUCT OF SUCH ACTIVITIES UNTIL CITY COUNCIL MAKES A FINAL DETERMINATION REGARDING THE ADOPTION OF GUIDELINES FOR THE ADMINISTRATION OF SUCH ACTIVITIES

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 areas and activities to be matters of state interest and to adopt guidelines and regulations for the administration of designated areas and activities; and

WHEREAS, pursuant to C.R.S. Section 24-65.1-401, the City may designate specified areas and activities to be of state interest after holding a public hearing and considering the intensity of current and foreseeable development pressures, specifying the boundaries of any proposed area, 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; and

WHEREAS, in compliance with the notice requirement set forth in C.R.S. Section 24-65.1-404, notice stating the time and place of the public hearing and the place at which materials relating to the matter to be designated and guidelines may be examined was published in the Fort Collins Coloradoan on August 15, 2021; and

WHEREAS, such notice stated that City Council would conduct a public hearing on September 21, 2021, to consider designating the following two activities as set forth in C.R.S. Section 24-65.1-203,

(1) 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) Site selection of arterial highways and interchanges and collector highways;

and

WHEREAS, on September 21, 2021, City Council held a public hearing as part of its regular meeting to consider the designation of the two noticed activities as matters of state interest.

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 City Council, in consideration of the information provided for and at the public hearing, hereby designates 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, as the term domestic water and sewage treatment system is defined in Sections C.R.S. Sections 24-65.1-104(5) and 25-9-102, and set forth in Exhibit "A" attached hereto and incorporated herein, as an activity of state interest with the following findings:

(1) Such designation is justified by the current and foreseeable development pressures related to major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems;

(2) Such designation shall apply to major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems located partially or entirely within the boundaries of the City;

(3) This activity is of state interest because the site selection and construction of domestic water and sewage treatment systems occurs throughout Colorado and can negatively impact the environment and wildlife resources, and the public health, safety, and welfare of the communities where they are located. While this activity is of state interest, it is ideally suited for local regulation in the communities where such systems are located because of the local understanding of the unique local conditions and needs;

(4) Uncontrolled development of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems would cause adverse impacts within the City to the public health, safety, and welfare, the environment and wildlife resources, and the City's operations and projects;

(5) The coordinated development and regulation of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems would mitigate within the City the negative impacts on the public health, safety, and welfare, the environment and wildlife resources, and the City's operations and projects, that would be caused by uncontrolled development; and

(6) Such designation is in the best interests of the residents of Fort Collins.

Section 3. That City Council, in consideration of the information provided for and at the public hearing, hereby designates the site selection of arterial highways and interchanges and collector highways, as the terms arterial highway and collector highway are respectively defined in C.R.S. Sections 24-65.1-104(3) and (4), and set forth in Exhibit "A", as an activity of state interest with the following findings:

(1) Such designation is justified by the foreseeable development pressures related to the site selection of arterial highways and interchanges and collector highways;

(2) Such designation shall apply to the site selection of arterial highways and interchanges and collector highways located partially or entirely within the boundaries of the City;

(3) This activity is of state interest because the site selection of arterial highways and interchanges and collector highways occurs throughout Colorado and can negatively impact the environment and wildlife resources and the public health, safety, and welfare of the communities where they are located. While this activity is of state interest, it is ideally suited for local regulation in the communities where such highways and interchanges are located because of the local understanding of the unique local conditions and needs;

(4) Uncontrolled development of the site selection of arterial highways and interchanges and collector highways would cause significant adverse impacts within the City to the public health, safety, and welfare, the environment and wildlife resources, and the City's operations and projects

(5) The coordinated development and regulation of the site selection of arterial highways and interchanges and collector highways would mitigate the negative impacts within the City to the public health, safety, and welfare, the environment or wildlife resources, and the City's operations and projects that would be caused by uncontrolled development; and

(6) Such designation is in the best interests of the residents of Fort Collins.

Section 4. That with regards to the activities designated in Section 2 ("Water and Sewer System Activity") and Section 3 ("Highway Activity") (collectively, the "Activities"), no person shall conduct the Activities, as further defined below, unless otherwise specified in this Section 4 until December 31, 2022, or until City Council has finally determined and adopted guidelines for the administration of the Activities pursuant to C.R.S. Section 24-65.1-101 et seq. This moratorium ("Moratorium") on the conduct of the Activities is authorized 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. The Moratorium shall go into effect on the effective date of this Ordinance.

(1) Water and Sewer System Activity subject to the Moratorium shall be projects that:

(i) Meet the term domestic water and sewage treatment system as defined in C.R.S. Section 24-65.1-104(5), and set forth in Exhibit "A";

(ii) Consist of pipelines designed for transmission of treated or untreated water or sewage that are contained within new permanent easements greater than 30 feet in width, or within new permanent easements greater than 20 feet in width that are adjacent to existing easements, or will use two or more parallel lines that are within 120 square inches of each other when viewed in cross-section; and

(iii) Are in whole or in part proposed to be located on, under, over or within a City natural area, as defined in Section 23-192 of the City Code, or a City park, whether developed or undeveloped.

The Moratorium shall apply to projects regardless of whether they have completed or are undergoing Site Plan Advisory Review pursuant to the Land Use Code, if they meet the criteria set forth in (i), (ii) and (iii) above.

(2) The following projects are not subject to the Moratorium on Water and Sewer System Activity:

(i) Any project (1) submitted and subject to review and approval under a development review process other than Site Plan Advisory Review under the Land Use Code, and (2) which project is necessary to physically deliver water by a direct connection to any proposed residential, commercial, industrial, or mixed-use development for which an application has been accepted by the City for Land Use Code development review as of the first reading date of this Ordinance;

(ii) Any water or sewer project submitted and subject to review and approval as part of a basic development review, minor or major amendment, project development plan, or final plan for development other than a stand-alone water or sewer project;

(iii)Projects to upgrade existing water and sewer facilities that are required maintenance or otherwise required by federal, state or Larimer County regulations, including repairing and/or replacing old or outdated equipment, or installing new equipment, provided that the upgrade does not alter the location of the existing facility beyond the existing easement or right-of-way; and

(iv) Any project that the City Council exempts from the Moratorium pursuant to Section 5 of this Ordinance.

(3) Highway Activity subject to the Moratorium shall be projects that: (i) meet the terms arterial highway and collector highway as such terms are respectively defined in C.R.S. Sections 24-65.1-104(3) and (4), and set forth in Exhibit "A", and interchanges associated with arterial highways; and (ii) are in whole or in part proposed to be located on, under, over or within a City natural area, as defined in Section 23-192 of the City Code, or a City park, whether developed or undeveloped. The Moratorium shall apply to projects that have completed or are undergoing Site Plan Advisory Review pursuant to the Land Use Code and which meet the terms arterial highway and collector highway.

(4) Any project that the City Council exempts from the Moratorium on Highway Activity pursuant to Section 5 of this Ordinance is not subject to the Moratorium.

(5) The Moratorium shall also apply to the following to the extent any of the following are related to a project subject to the Moratorium:

(i) The City's acceptance and processing of applications for Site Plan Advisory Review pursuant to the Land Use Code for development that qualifies as one of the Activities;

(ii) The acceptance and processing of applications or requests for City permits, including flood plain and encroachment permits; and

(iii) The acceptance and processing of applications or requests to acquire City real property or rights therein, including easements.

Section 5. That the City Council may exempt certain projects from the Moratorium established in Section 4 pursuant to the following procedure:

(1) City Council may exempt projects subject to the Moratorium if it finds that the applicant has established that granting of the exemption would not be detrimental to the public good, and that:

(i) The project, if reviewed using the procedures specified in the Land Use Code for a Site Plan Advisory Review, would not result in significant adverse impacts that would be mitigated through a binding City review process; or

(ii) The project would meaningfully address, or assist in addressing, an important community need specifically defined and described in City Plan or a City Council adopted policy, ordinance, or resolution and delaying the project until the moratorium is terminated would result in substantial hardship to the community in realizing the benefit of the project in addressing, or assisting in addressing, the community need.

(2) Any project that Council exempts from the Moratorium pursuant to this Section must have its complete application accepted by the Community Development and Neighborhood Services Department at least sixty days prior to the termination of the Moratorium and such applications will be subject to the applicable Land Use Code standards in effect at the time of acceptance. Applications accepted within the period sixty days before the termination of the Moratorium or after the termination of the Moratorium will be subject to the Land Use Code standards in effect at the time of acceptance including 1041 regulations.

(3) Applications for Council exemption review pursuant to this Section must be provided to the Director of Community Development and Neighborhood Services ("Director").

(i) Each application shall contain all information and materials that the Director determines are necessary to allow City staff to review the project and make a recommendation to City Council and for City Council to make its determination on the exemption.

(ii) The Director will charge a fee to recover the estimated staff time in processing and reviewing the application to be paid upon submittal of the application.

(iii) City staff will review the application and provide a recommendation to City Council.

(4) City Council will make its determination whether to grant an exception after holding a quasi-judicial public hearing.

(i) The City Clerk will schedule the hearing for a date within sixty days of receiving notice from the Director accepting a complete application for exemption, unless Council acts by motion or resolution to extend the time for that hearing.

(ii) Notice for the public hearing will occur pursuant to Land Use Code Section 2.2.6 using a minimum notice radius of 1000 feet.

(iii) The City Council decision to grant or deny an exception request must be memorialized in an adopted ordinance.

(iv) Any exception granted by City Council under this Section 5 would not be subject to later adopted 1041 regulations except as stated in Section 5(2).

Introduced, considered favorably on first reading, and ordered published this 21st day of September, A.D. 2021, and to be presented for final passage on the 19th day of October, A.D. 2021.

Mayor

ATTEST:

Interim City Clerk

SEAL

Passed and adopted on final reading on the 19th day of October, A.D. 2021.

Mayor

ATTEST:

Interim City Clerk

SEAL

EXHIBIT "A"

Colorado Revised Statutes Definitions Relevant to the City Council Designation of Matters of State Interest

"Domestic water and sewage treatment system" means 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. (Section 24-65.1-104(5), C.R.S.)

"Water distribution system" means any combination of pipes, tanks, pumps, or other facilities that delivers water from a source or treatment facility to the consumer. (Section 25-9-102(6), C.R.S.)

"Water treatment facility" means the facility or facilities within the water distribution system that can alter the physical, chemical, or bacteriological quality of the water. (Section 25-9-102(5), C.R.S.)

"Arterial highway" means any limited-access highway which is part of the federal-aid interstate system or any limited-access highway constructed under the supervision of the department of transportation. (Section 24-65.1-104(3), C.R.S.)

"Collector highway" means 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 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. (Section 24-65.1-104(4), C.R.S.)

Trout Raley
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303.861.1963
www.troutlaw.com

August 30, 2022

DELIVERED VIA FIRST CLASS
AND EMAIL TO: byatabe@fcgov.com

Brad Yatabe
Assistant City Attorney
City of Fort Collins
300 La Porte Avenue
Fort Collins, Co. 80521

RE: Fort Collins Draft Regulations pursuant to the Colorado Land Use Act; Areas and Activities of State Interest § 24-65.1-101 (herein the "Act")

Dear Mr. Yatabe,

This letter is written for the purpose of addressing two particular provisions of the draft 1041 regulations posted in July and August of 2022 on the City of Fort Collins website and explained by Ms. Kelly Smith, Senior Environmental Planner, at several recent water user meetings. I understand you are counsel in the lead on these regulations. We represent the Northern Integrated Supply Project Water Activity Enterprise and Northern Colorado Water Conservancy District.

The two regulations are 2-201 which provides that the City may enter into an Intergovernmental Agreement (IGA) as an alternative to a permit and, 3-201 (L) which purports to regulate "all jurisdictions receiving water diverted from within the City limits…"

In short, we disagree that the statute supports an IGA in lieu of a permit after adoption of regulations, and we disagree that the statute empowers regulation of water diversions as set forth in 3-201(L). Our reasons for each position are set out below.

I. The IGA provision is as follows:

2-201 Intergovernmental Agreements.
Upon the request of the State of Colorado or a political subdivision of the State, as defined by Section 29-1-202, C.R.S., proposing to engage in a designated activity of state interest

or development in a designated area of state interest, the requirements of these Regulations may be met by the approval of an intergovernmental agreement between the City and the State or political subdivision applicant. The City Council may, but shall be under no obligation to, approve such an intergovernmental agreement in lieu of requiring an approved permit pursuant to these Regulations and the approval of any intergovernmental agreement is a legislative act that must occur by ordinance. In the event such an agreement is approved by the City, no approved permit application shall be required, provided that all of the following conditions are met:

(A) The State or political subdivision applicant and the City must both be authorized by Article XIV, Section 18(2) of the Colorado Constitution and Section 29-1-201, et seq., to enter into the agreement.

(B) The purpose and intent of these Regulations must be satisfied by the terms of the agreement.

(C) Action on the proposed intergovernmental agreement by the governing body of the State or political subdivision applicant must be in the manner required of it by the Colorado Constitution and statutes.

(D) Exercise of the provisions of this Section by the State or political subdivision applicant will not prevent that entity from electing at any time to seek a permit pursuant to these regulations. Additionally, any entity which has previously proceeded under the permit provisions of these Regulations may at any time elect to proceed instead under this Section.

I. The Basis for our Disagreement

The Act limits the City's authority to conduct a permitting process consummated by denial or approval of a permit. It does not allow the City discretion to adopt an alternative procedure which obviates the need for a permit. This interpretation is supported by the text of the statute and case law.

Statutory text

Section 301 of the Act, entitled "Functions of local government," authorizes local governments to hold hearings on permit applications and then either grant or deny those applications:

(1) Pursuant to this article, it is the function of local government to:

. . . .

(b) Hold hearings on applications for permits for development in areas of state interest and for activities of state interest;

(c) Grant or deny applications for permits for development in areas of state interest and for activities of state interest;

. . . .

§ 24-65.1-301.

Section 501 similarly directs local governments to issue a permit before a matter of state interest may be conducted. Tellingly, that section is entitled, "Permit for development in areas of state interest or to conduct an activity of state interest *required*," and it provides in part that:

> The local government may approve an application for a permit to conduct an activity of state interest if the proposed activity complies with the local government's regulations and guidelines for conduct of such activity. If the proposed activity does not comply with the guidelines and regulations, the permit shall be denied.

§ 24-65.1-501(4).

This text is fairly be interpreted as not only authorizing, but also limiting, local government to the permitting process. Another provision of the Act also points toward this conclusion. Section 107 of the Act exempts matters of state interest that meet certain conditions. One such exemption grandfathers in developments approved by the local governmental authority as of the date the Act became effective. *See* § 24-65.1-107(1)(c)(III). By negative implication, an approval after the effective date would *not* be exempt from the permitting process. Such an approval could be interpreted to include an IGA from the governmental authority.

Case Law

No reported decision has directly addressed this issue. However, the Act's permit application and approval process is addressed in several opinions as mandatory:

- "Prospective developers *must apply to the local government for a permit* in order to develop in designated areas of state interest." *Colorado Mining Ass'n v. Bd. of County. Comm'rs of Summit County.*
- "Once such local government regulations have been adopted, any person desiring to conduct an activity of state interest *must file an application for a permit* with the local government where such activity is to take place." *Bd. of County. Comm'rs of Douglas County. v. Gartrell Inv. Co.*
- "The Act is detailed and specific in empowering local governments to adopt guidelines and regulations for areas and activities of state interest. It is replete with definitions, provides an exclusive list of those areas and activities a local government may designate as matters of state interest, *and mandates the permit application and approval process*." *City & County. of Denver v. Bd. of County. Comm'rs of Grand County.*

Tellingly, Larimer County in its 2021 1041 modifications, deleted the option of entering into an IGA rather than permitting under its regulations. To the extent this provision is maintained in the 1041 regulations, the NISP Enterprise and other Northern Water projects will decline to use it out of concern that it would be overturned in a subsequent legal challenge.

II. The second issue concerns 3-201 (L) which provides:

(L) All jurisdictions receiving water diverted from within City limits must demonstrate adopted policies, regulations and programs related to water conservation are sufficient to reduce lower per capita water use over time. Such policies, regulations and programs may include but not be limited to:

1. Green plumbing code.
2. Indoor efficiency standards.
3. Reuse of water.
4. Smart meters.
5. Submetering multifamily units.
6. Incentive and rebate programs to reduce water use.
7. Demand-based tap fees.
8. Xeriscape/turf limitations code requirements.
9. Irrigation efficiency code requirements.
10. Post-occupancy violations.

II. The Basis for our Disagreement

The Act does not provide for regulation by one local government (defined as a city or county CRS §24-65.1-102 (2)) to reach into another local government's water uses by regulation of water "diversions" even when the diversion is within the boundaries Fort Collins.

The Act provides regulation of "areas" and "activities" of state interest which are specifically defined in the Act. As is pertinent here, the regulated "activities" in 24-65.1 (203) are:

(a) Site selection and construction of major new domestic water and sewerage treatment systems and;

(b) major extensions of existing domestic water and sewage treatment systems.

These water and sewerage systems are defined in 24-65.1-104 by reference to CRS §25-9-102 (5) (6) and (7) and pipes, structures and facilities through which wastewater is collected for treatment.

Water diversions are not listed as a regulated activity in the statute at all. Additional areas and activities are included but are not the subject of this letter such as highways, airports, geothermal development etc. By negative implication water "diversions", and many other activities, are not listed and do not fall within the activities that may be regulated.

Further, a comprehensive water conservation program is administered by state law through the Office of Water Conservation and Drought Planning. See CRS §37-60-124. Municipalities and other water providers, particularly those who seek state funding, are required to submit conservation plans to the state including an implementation plan. See CRS §37-60-126. The statutory listing of measures to conserve water include water reuse systems, water efficient fixtures, low water use landscapes, distribution leak detection, customer water use audits and more. See CRS §37-60-126 (4) for a listing of water saving measures and programs. In the face of a state program, it makes little sense to consider a redundant local regulation particularly one that is outside the scope of the Act. Northern Water also has a robust water conservation program which includes grants for water conservation. Taken to an extreme, if other high mountain local governments were to adopt a water diversion regulation, those counties could assert authority over all the front range cities including Fort Collins, and that is not what was contemplated by the legislature. Conflicting regulations could be adopted by the hundreds of local governments in Colorado where water is diverted or rediverted.

The Act also has a specific provision to protect water rights. 37-65.1-106 (1) provides:

> "Nothing in this article shall be construed as …(b) modifying or amending existing laws or court decrees with respect to the determination and administration of water rights."

The purported regulation of water conservation by the city is in direct conflict with the exclusive jurisdiction of the Colorado's water courts and administration systems including the water conservation statutes and the many water decrees that provide for diversion of water at a particular location and for a particular use.

Lastly, CRS §24-65.1-401 Designation of matters of state interest provides that:

> "After a public hearing, a local government may designate matters of state interest ***within its jurisdiction,.."*** taking into consideration an itemized list of concerns.

By limiting the local government to its jurisdiction, the Act underscores the reason for the Land Use Act initially which was that certain land uses within a local government's jurisdiction benefits areas outside the jurisdiction, such as airports and highways, and in those circumstances, for specified activities and in specified geographic areas only, a local government could regulate in certain ways enumerated within the Act. It was not a license to regulate more than what is enumerated and certainly not the use of water and water rights by other governments. The Act in numerous sections limits 1041 authority to a local government's jurisdiction. For Example:

- (1)(a) Mineral resource areas designated as areas of state interest shall be protected and administered in such a manner as to permit the extraction and exploration of minerals therefrom, unless extraction and exploration would cause significant danger to public health and safety. If ***the local government having jurisdiction,*** after weighing sufficient technical evidence finds…

- [with regard to mass transit] Activities shall be conducted with reasonable consideration, among other things, as to the character of the area and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land ***throughout the jurisdiction of*** the applicable local government.

In closing, we note these aspects of the draft regulations would not survive a legal challenge and while we understand the city staff is in the early stages of seeking input to its draft, we seek to raise our concerns with these two fundamentally defective provisions at this early stage. We are available to meet with you at your convenience and discuss these concerns. I look forward to your response.

Sincerely,

Peggy E. Montaño
for
Trout Raley

cc: Town of Erie, Left Hand Water District, City of Fort Morgan, Weld County Water District, Town of Windsor, Fort Collins Loveland Water District, Town of Frederick, City of Fort Lupton, Town of Severance, City of Lafayette, Town of Eaton, City of Evans, Morgan County Quality Water District, City of Dacono

Trout Raley
Montaño • Freeman • Sinor • Thompson P.C.

September 16, 2022

Brad Yatabe
Assistant City Attorney
City of Fort Collins
300 La Porte Avenue
Fort Collins, Co. 80521

Delivered via first class and email to: byatabe@fcgov.com

Re : Fort Collins Draft regulations Areas and Activities of State Interest § 24-65.1-101

Dear Mr. Yatabe,

This letter follows the letter sent to you on August 30, 2022. On September 1, 2022 the Colorado Court of Appeals issued its opinion in *City of Thornton v. Larimer County,* Court of Appeals No. 21CA0467. While the ultimate decision of the court upheld the denial of the permit sought by Thornton, the opinion also provided important rulings concerning the scope and authority of Local Governments in 1041regulation. Because Fort Collins is in the process of enacting such regulations, we feel it is important to reach out to you regarding this important ruling.

I. At pages 22 through 26 of the Opinion, the Court of Appeals found that Larimer County abused its discretion in permitting the siting and development of certain domestic water pipelines in four distinct ways:

(A) The County's requirement for analysis of "cumulative impacts of irrigated farmland turning to dryland" went beyond the County's jurisdiction to regulate "siting and development" of the pipeline as being limited to the land area being disturbed by the project.

(B) The County's consideration of farmland dry-up was an improper abrogation of water rights protected by CRS § 30-28-106(3)(a)(IV)(E). See also CRS §24-65.1-106 (1)(a).

(C) The County's consideration of Thornton's use of its powers of eminent domain as "disfavored by property owners" conflicts with the clear authority of municipalities under Colorado Constitution Article XVI, §7 to acquire lands through eminent domain to convey water for domestic purposes. section 24-65.1-106(1)(a) bars local governments from using 1041regulatory powers to diminish the rights of owners of property as provided by the state constitution. Read together, it is clear that the County could not consider Thornton's potential use of eminent domain during its 1041 review.

(D) The County's criticized Thornton for failing to present the "Shields Street" pipeline siting alternative, despite Thornton's belief that the alternative would degrade its water source by running it through Fort Collins before it could be collected, treated and transported. The Court concluded this criticism of the Thornton project exceeded the County's power to regulate the "siting and development" of domestic water pipelines.

II. Application of the Thornton ruling to the Fort Collins draft 1041 regulations.

The Review Standards in §2-401 (H) through (T) of the draft 1041 regulations touch on recreation opportunities, terrestrial and aquatic plant life, conservation easements, parks and trails as well as a large number of other enumerated items. These criteria reach far beyond the authority listed for areas in CRS §24-65.1-202 and for activities in CRS §24-65.1-204. In addition, these sub-sections apparently are intended to reach beyond the land on which the construction or activity occurs as emphasized by the Thornton opinion. *See* CRS 24-65.1-102 (1). These factors run afoul of the City's statutory authority in much the same way as the County's focus on agricultural land dry-up outside of the project's land area.

Sub-section (I) of the draft §3-201 Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions concerns itself with easement acquisition, which should not be a consideration under the Thornton opinion; the project proponent's method for acquiring rights in land are beyond the scope of local jurisdiction.

We recognize that the Court of Appeals' opinion in the Thornton case may not be final, and that a petition for rehearing or for certiorari may take place. We feel, however, that it is important to share our thoughts and concerns with you as counsel in the lead in development of these regulations. We are willing to meet with you to further discuss our concerns as your client's process unfolds.

Sincerely,

Peggy E. Montaño
For Trout Raley

Cc: Town of Erie, Left Hand Water District, City of Fort Morgan, Weld County Water District, Town of Windsor, Fort Collins Loveland Water District, Town of Frederick, City of Fort Lupton, Town of Severance, City Lafayette, Town of Eaton, City of Evans, Morgan County Quality Water District, City of Dacono

October 21, 2022

Mr. Tyler Marr
Assistant City Manager
City of Fort Collins
300 Laporte Avenue
Fort Collins, Colorado 80521

Re: Comments to the City of Fort Collins Draft 1041 Regulations (Site Selection and Construction of Domestic Water and Sewage Treatment Systems)

Dear Mr. Marr:

Enclosed for your review are City of Greeley ("Greeley") comments to the revisions proposed by City of Fort Collins to its Land Use Code concerning Areas and Activities of State Interest ("1041 Regulations"), primarily to those concerning the Site Selection and Construction of Domestic Water and Sewage Treatment Systems.

A significant proportion of Greeley's water supply originates in the Cache la Poudre River and is treated at the Bellvue Water Treatment Plant northwest of Fort Collins before being conveyed to Greeley via three potable water transmission lines that travel through Fort Collins. Greeley has been conveying its potable water through Fort Collins since 1907. In addition to treating and delivering water to Greeley, Greeley provides treatment and transmission for portions of the Northern Colorado communities of Windsor and Evans. Portions of Greeley's transmission pipelines are nearly 100 years old and require regular maintenance, repair, and replacement. Overly burdensome regulation may require pipeline realignments would handicap Greeley's ability to make timely and necessary repairs and upgrades, placing our customers and regional partners at risk of service disruptions.

In addition to the proposed redlines enclosed with this letter, Greeley comments are as follows. Greeley reserves the right to make additional comments through the course of the stakeholder process.

- Several of the definitions included within Section 1-110, including those for *Major extension of an existing wastewater treatment system* and *Major extension of an existing domestic water treatment system* hinge on the interpretation of the defined term *Material change*, which is generally defined as a significant change to the nature or location of the development and its impacts. Accordingly, this definition further hinges on the interpretation of the separate defined term *Significant*, which is defined as "deserving to be considered important, notable, and not trifling." This is not a meaningful nor sufficiently clear substantive standard by which potentially regulated activities can be measured in the regulatory process and is arguably too vague to be enforceable.

- Several of the definitions included within Section 1-110, including those referenced above, contain the qualification that the system, extension, or upgrade meet the Land Use Code definition of the term *Development*. While that term does not include "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," the regulations should further exclude such work within existing easements by municipal water providers that do not clearly fall within the definition of a public utility, such as the City of Greeley and its Water Enterprise.

- The references to *service lines* and *distribution lines* throughout the definitions in Section 1-110 should include a threshold size or capacity of infrastructure that falls within each of the definitions, to more explicitly exclude projects of a smaller scale that will have no significant impacts.

- Section 2-303 should include more explicit criteria that the Director will consider when determining whether to make a finding that no significant impacts ("FONSI") are likely to occur from the proposed development plan.

- Section 2-307 should include a requirement that the Director provide a reasonably detailed overview of those application elements found to be complete and those incomplete, to provides applicants an opportunity to focus on the areas where the application was deemed incomplete. Section 2-307 should also include a specific timeframe in which the Director will make a determination of completeness if no request for additional application materials has been made.

- There are several review standards throughout Section 2-401 that are already regulated in a comprehensive way by other agencies and arguably outside the scope of what Fort Collins may regulate from a land use perspective. For example, changes in the quality and quantity of fisheries and the changes in instream flows or reservoir levels are within the purview of agencies in the State Department of Natural Resources. Similarly, air quality, surface water quality, groundwater quality, wetlands and riparian areas, terrestrial and aquatic plant and animal life, and soil and geologic conditions are all regulated by various state and federal agencies. Furthermore, the standards or measurement of significant impact is not clearly defined and such ambiguity is problematic in the city's evaluation of an application for its completeness.

- The provision in Section 3-201(L) requiring that jurisdictions receiving water diverted from within City of Fort Collins limits demonstrate sufficient water conservation policies, regulations, and programs is outside the scope of what Fort Collins may regulate from a land use perspective in other communities. It is not clear that the requirement, as applied to jurisdictions located some distance from the City of Fort Collins, bears a rational relationship to the health, safety, and welfare of the Fort Collins community.

- Beyond the scope issue in the previous comment, Section 3-201(L) is overly vague as to the extent of "policies, regulations, and programs" that would be considered sufficient for the review standard. At the very least, the provision should be more narrowly tailored to include a clear measurable standard, such as a current water conservation or efficiency plan as required by the State of Colorado.

The Cities of Greeley and Fort Collins have a century-long partnership on water matters in Northern Colorado. We value our strong alignment on many water issues, including watershed health, and while we understand the desire for greater local control of certain projects, we urge you to consider the negative regional impacts of the 1041 Regulations as currently proposed.

Sincerely,

Sean P. Chambers
Director of Water and Sewer

Cc: Mayor Jeni Arndt
Mayor John Gates
City Manager Raymond Lee
Deputy City Manager Don Tripp

November 7, 2022

1041 Regulations – Project Update

local participation, transparency and improved environmental outcomes

Kirk Longstein
Senior Environmental Planner

Rebecca Everette
Planning Manager

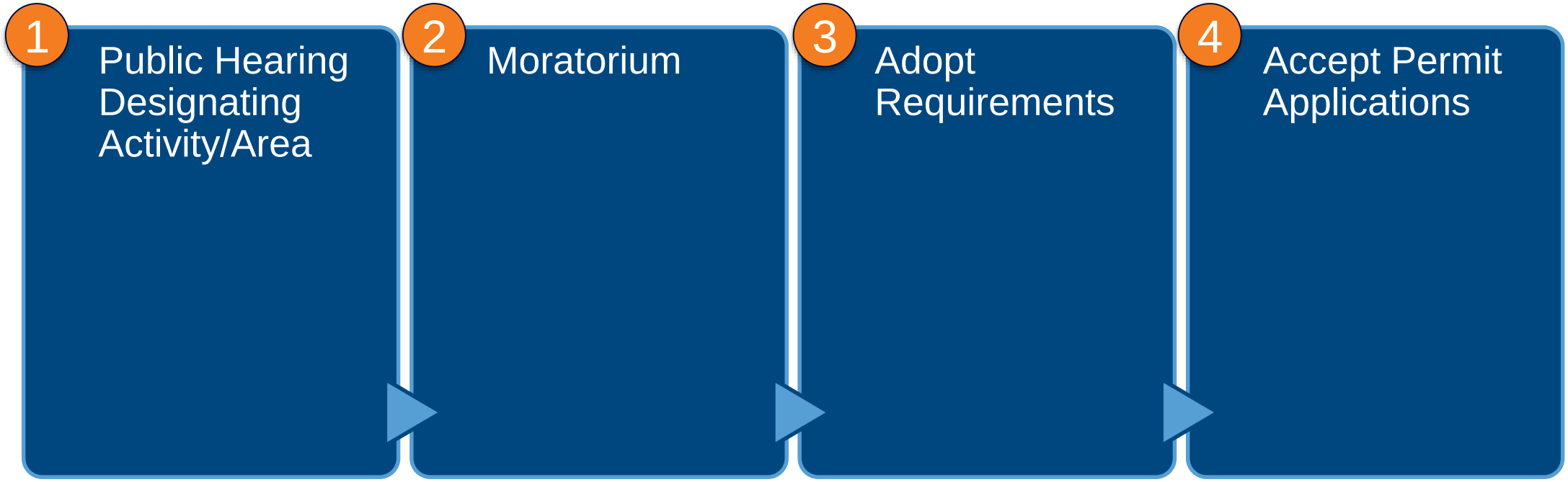
City of Fort Collins

1. Do Councilmembers support extending the length of the moratorium to allow for final refinements to the code and additional outreach?

2. Do Councilmembers have feedback on the proposed scope to focus on the greatest areas of impacts rather than major projects?

3. Do Councilmembers support exempting projects previously approved through Site Plan Advisory Review (SPAR), while still requiring 1041 permitting for projects not approved through SPAR?

HB74-1041 Statutory Process



September - October 2021	October 2021 – December 2022	TBD	TBD

Designation and Moratorium

- ✓ September/October/December 2021 Council designated activities and imposed a moratorium on activities of Statewide Interest

Activities of Statewide Interest

- New/Expanded Domestic Water/Wastewater
- Highways and Interchanges

Moratorium (January 2022)	
Thresholds	Water and Sewer Systems • Easements greater than 30 feet in width, or • Within new permanent easements greater than 20 feet in width that are adjacent to existing easements, or • Two or more parallel lines that are within 120 square inches of each other when viewed in cross-section. Project to upgrade existing water and sewer facilities, including repairing and/or replacing old or outdated equipment, or installing new equipment Interchanges associated with arterial highways located within City natural areas or City parks

Where We've Been

2022

June | August | October

Council Work Session & v1 Draft Regulations Published

Public Engagement

Legal Review of v2 Draft Regulations

Feedback:

- ✓ Remove exemption loopholes
- ✓ Concerns with term significant
- ✓ Tiered review process
- ✓ Pre-application timeline

Engaged

Boards/Commissions
Chamber of Commerce
Save the Poudre
Sierra Club
Fort Collins Sustainability Group
Water Providers
Sanitation Districts
CSU
Other Communities

Stakeholder Feedback

Unnecessary burden

&

Ambiguous approval process

1041 Parameters	Version 2 update
Pre- Submittal Requirements	Adds a 28 day requirement for Director to make FONAI determination and a 60 day time frame for staff to review and deem application complete
Decision Maker	Eliminates the administrative permit; makes City Council the sole decision maker

Stakeholder Feedback

How does 1041 lead to a better project outcome and enhance overall community benefits?

1041 Parameters	Version 2 update
Thresholds	Added geographic based thresholds to designated activities impacting City Parks, Natural Areas, Natural Habitat Buffer Zones, Cultural resources

Stakeholder Feedback

Concern about term “significant”

1041 Parameters	Version 2 update
Definitions	Reworking of the FONSI to become the FONAI or finding of negligible **adverse** impact. 1.) Change from a **significant** impact standard to a review of whether there are **adverse** impacts of any kind. 2.) To the extent there are adverse impacts, **mitigation** can compensate for the adverse impacts in order to meet a standard.

Stakeholder Feedback

Concern about IGA Option

1041 Parameters	Version 2 update
IGAs	Section Removed

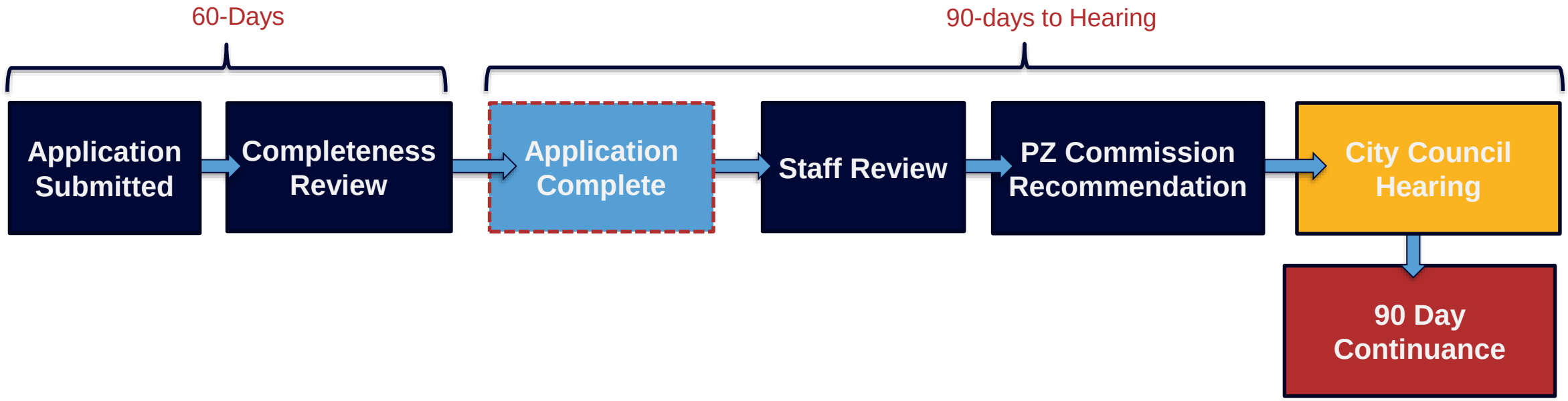
Stakeholder Feedback

Requirements for water conservation go beyond the City's appropriate reach

1041 Parameters	Version 2 update
Review Standards	Removes requirements related to the applicant's system that are not physically within the scope of the regulations

1041 Regulations Procedural Time Frame

28-Days pre-application review (determine whether permit is required)



Revised Approach: Changes in Scope

Major Water Projects

- Transmission & Distribution Mains
- Water Diversions
- Water Treatment Facility
- Reservoirs
- Storage Tanks

Major Wastewater Projects

- Wastewater Treatment Plants
- Interceptor & Collector Lines
- Lift Stations

Highway Projects

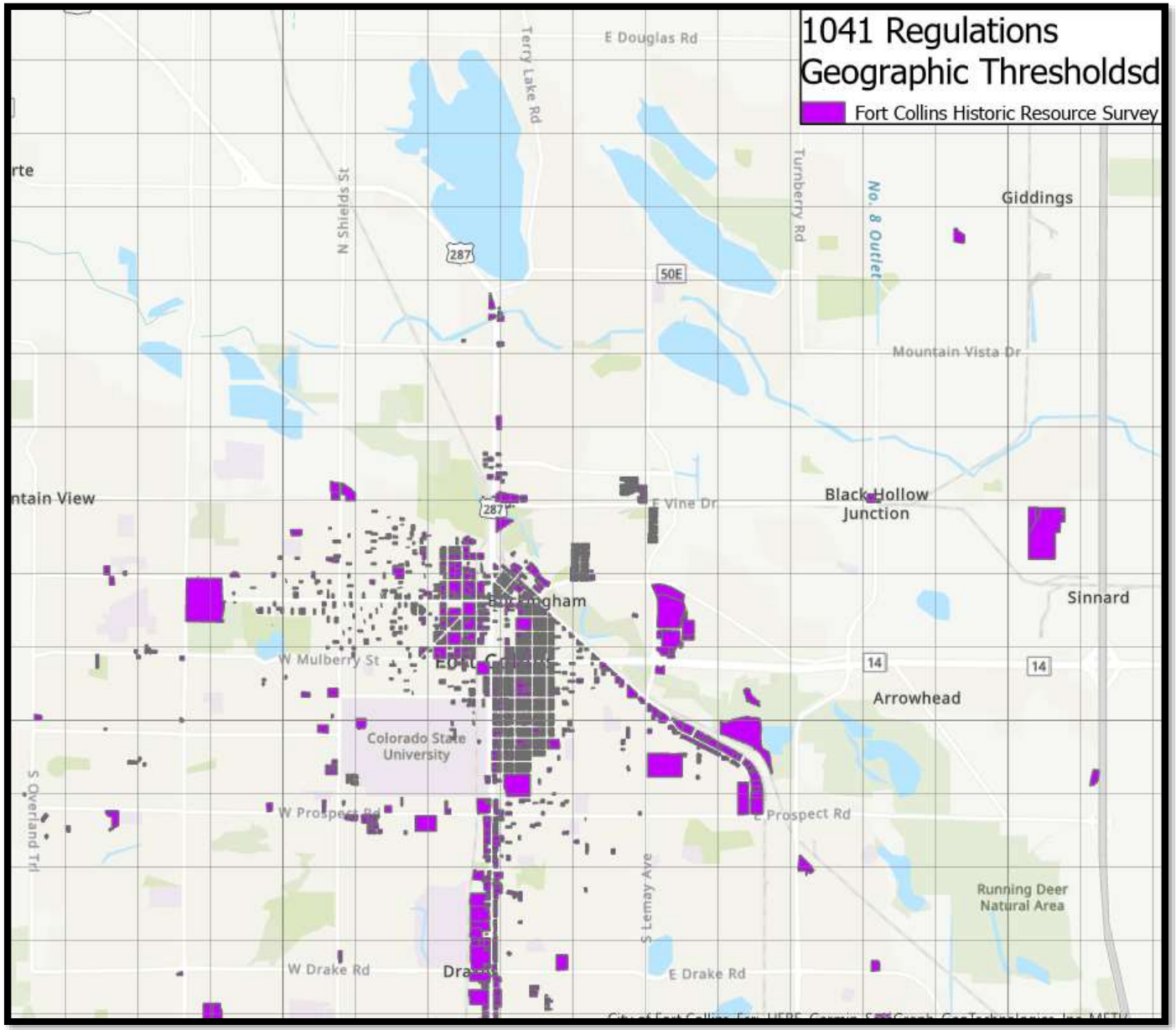
- New Highways/ Interchanges/ Collector Highways
- Expansions by 1 Vehicular Lane
- Expansions of Interchanges or Bridges

Proposed Approach: Geography-Based Thresholds

Water and Wastewater Projects
Located in Natural Area, Park or Other City Property
Located in Natural Habitat Buffer Zone (NHBZ)
Impacts to Historic/Cultural Resources

Highway Projects
Located in Natural Area, Park or Other City Property
Located in Natural Habitat Buffer Zone (NHBZ)
Impacts to Historic/Cultural Resources
May Result in Relocation of Homes or Businesses

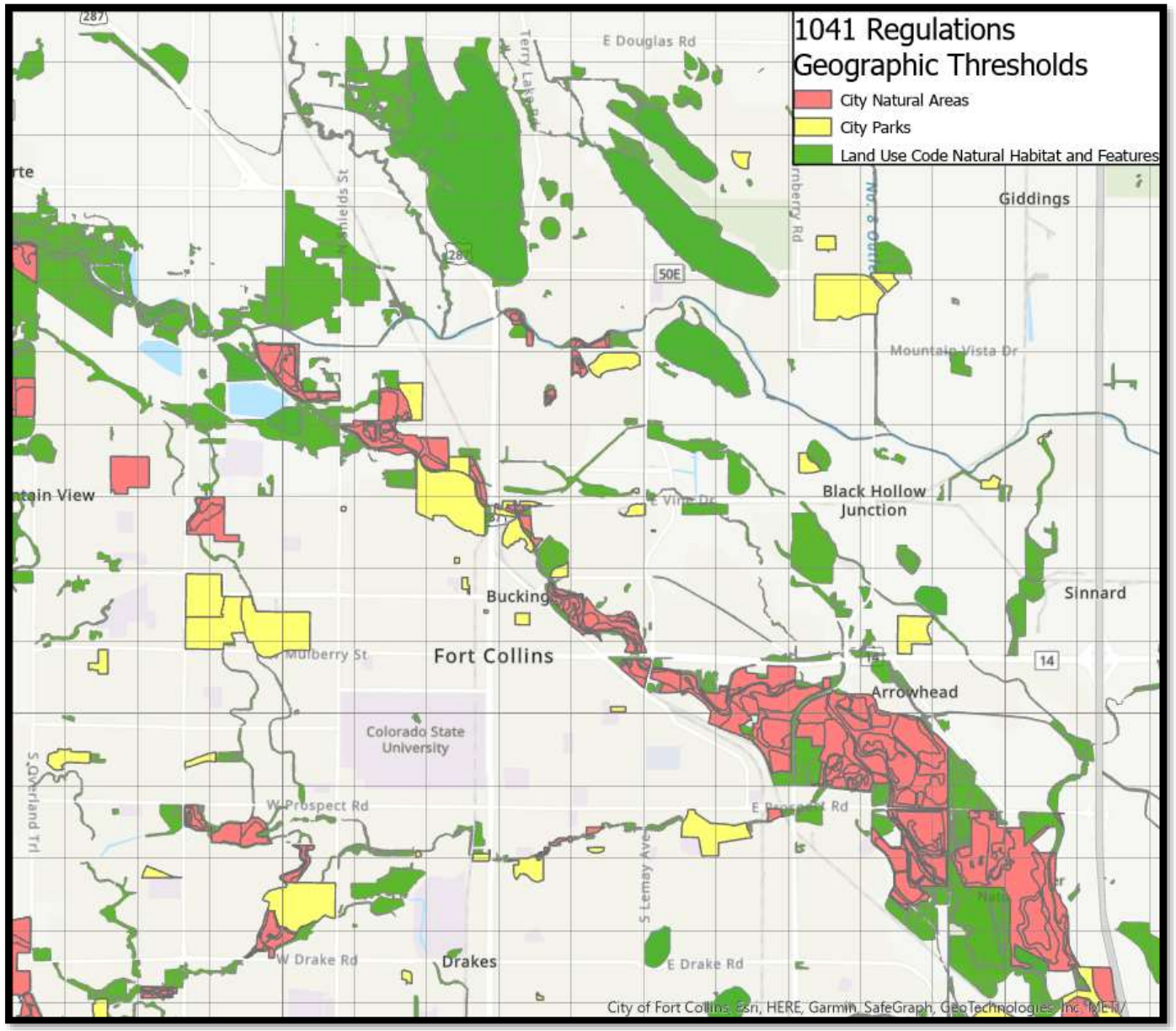
Cultural Resources



Historic/Cultural Resources

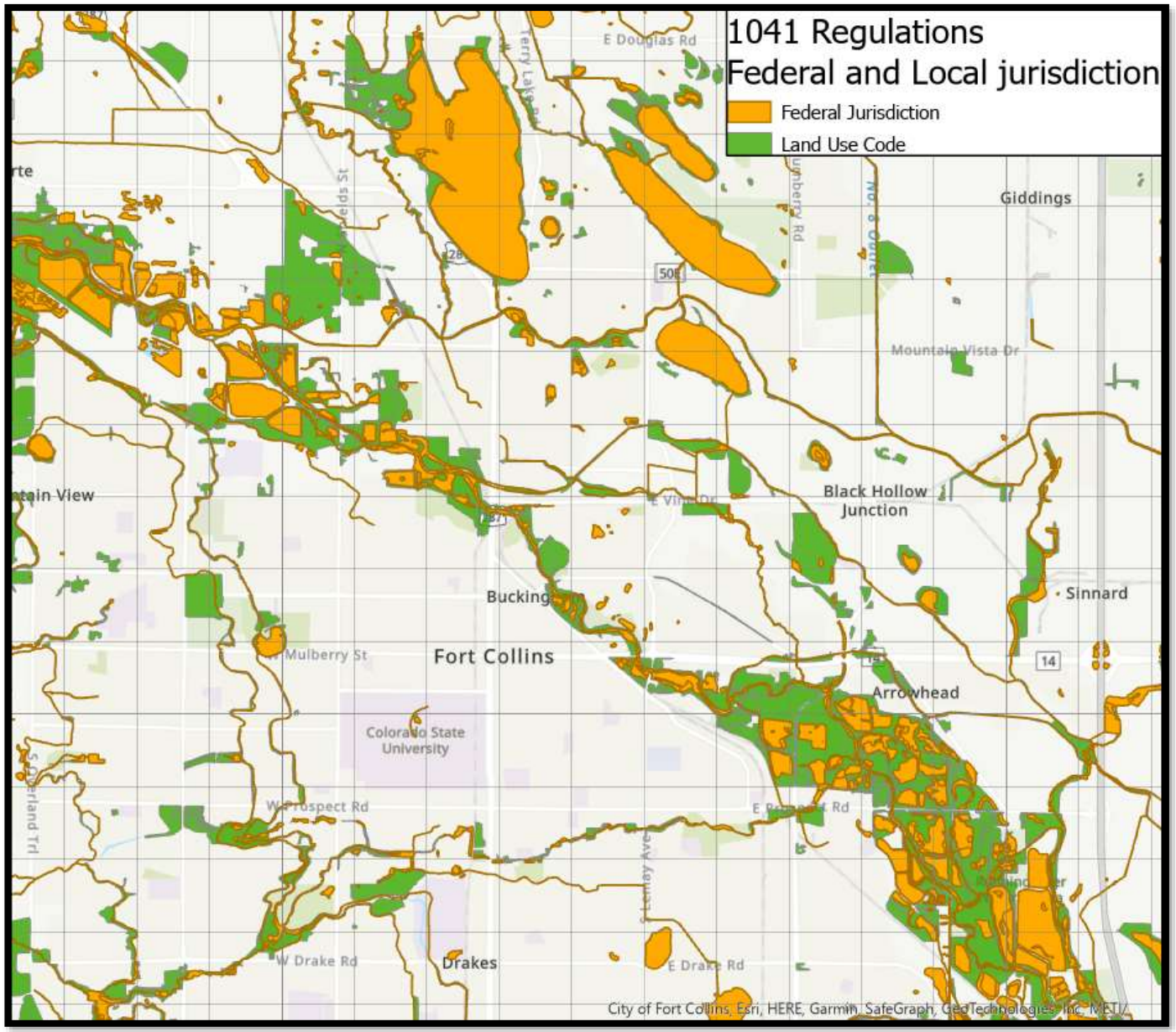
200’ Buffer

- Designated (City, State, or Federal)
- Eligible (City, State, or Federal)
- Local Corridors consistent with NHBZ (e.g., Spring Creek, Cache la Poude, etc



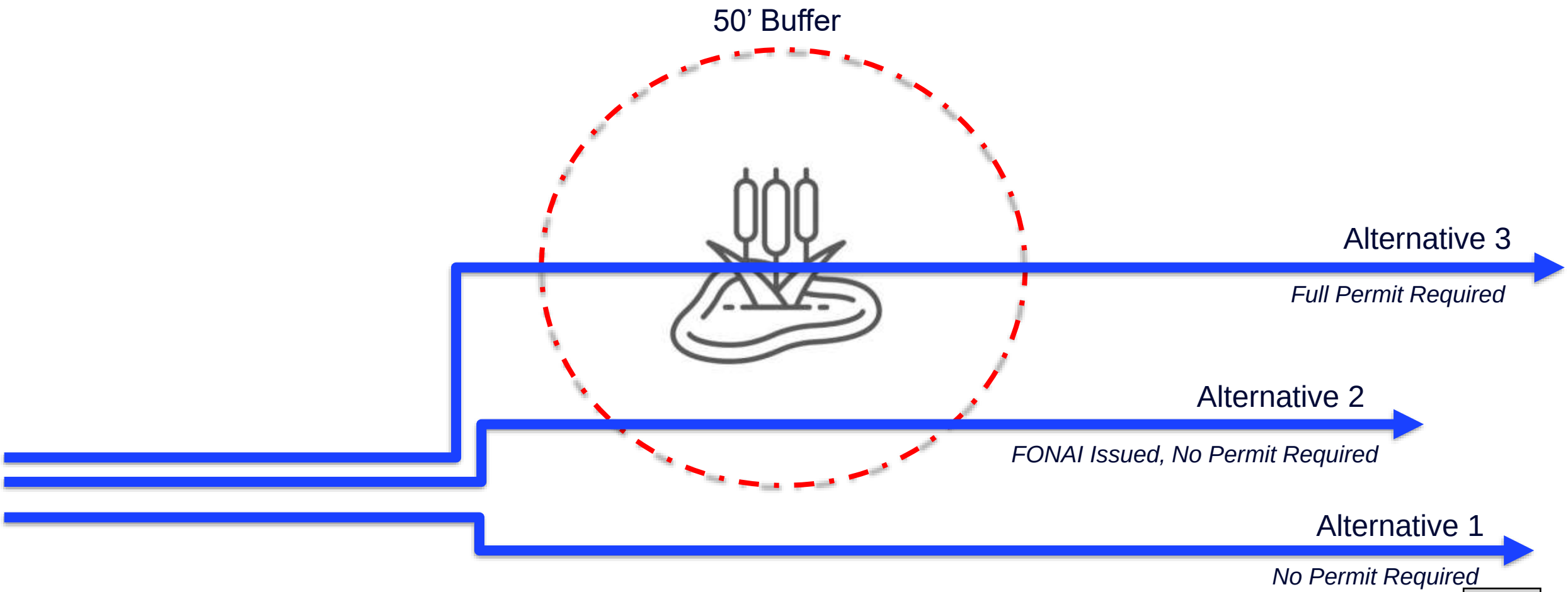
Example: Natural Habitat Features	Buffer Zone Standard
Isolated Areas	
Shrubland	50 feet
Riparian forest	50 feet
Lakes or reservoirs	100 feet
Wetlands < ⅓ acre in size	50 feet
Stream Corridors	
Boxelder Creek	100 feet
Cache la Poudre	300 feet
Cooper Slough	300 feet
Dry Creek	100 feet
Fossil Creek and Tributaries	100 feet
Spring Creek	100 feet

Federal vs Local Jurisdiction



- ✓ Federal Permitting documents are identified and reviewed during pre-application
- ✓ Review for concurrence with mitigation plans covered by another agency
- ✓ Buffers are applied and Mitigation is required for any adverse impacts to non jurisdictional wetlands

Scenario: Natural Habitat Buffer Zone



Review Standards

- Consider anticipated adverse impacts + mitigation
- Conformance to City Plans and policies
- Natural hazard risk
- Nuisances
- Hazardous materials risk

Evaluate Impacts to:

- Local infrastructure and service delivery
- 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

Key Considerations:

- ✓ Advisory vs regulatory
- ✓ SPAR projects are not evaluated for compliance with Land Use Code
- ✓ “Location, Character, and Extent” review
- ✓ Less rigorous documentation and analysis

Staff proposed options:

- ❑ Option 1 – **Exempt all** projects previously reviewed through the SPAR process.
- ❑ Option 2 - Exempt projects **previously approved** through the SPAR process.
- ❑ Option 3 – **No exemptions** for previously reviewed SPAR projects.

Where Are We Going Next?

Timing for Council Consideration	
Recommended Next Steps	• November 15 Consent Agenda Item extending the length of moratorium for 3 months • Additional time for stakeholder review • First Reading – December or January • Second Reading – January or February

Continued Public Engagement

Technical Working groups
Press Release
City website engagement

1:1 Interviews
Public open Houses

1. Do Councilmembers support extending the length of the moratorium to allow for final refinements to the code and additional outreach?

2. Do Councilmembers have feedback on the proposed scope to focus on the greatest areas of impacts rather than major projects?

   Geographic Thresholds:

   - Parks, natural areas, and other city-owned properties
   - Natural habitat buffer zones
   - Historic and cultural resources

3. Do Councilmembers support exempting projects previously approved through Site Plan Advisory Review (SPAR), while still requiring 1041 permitting for projects not approved through SPAR?

For Questions or Comments, Please Contact:

Kirk Longstein

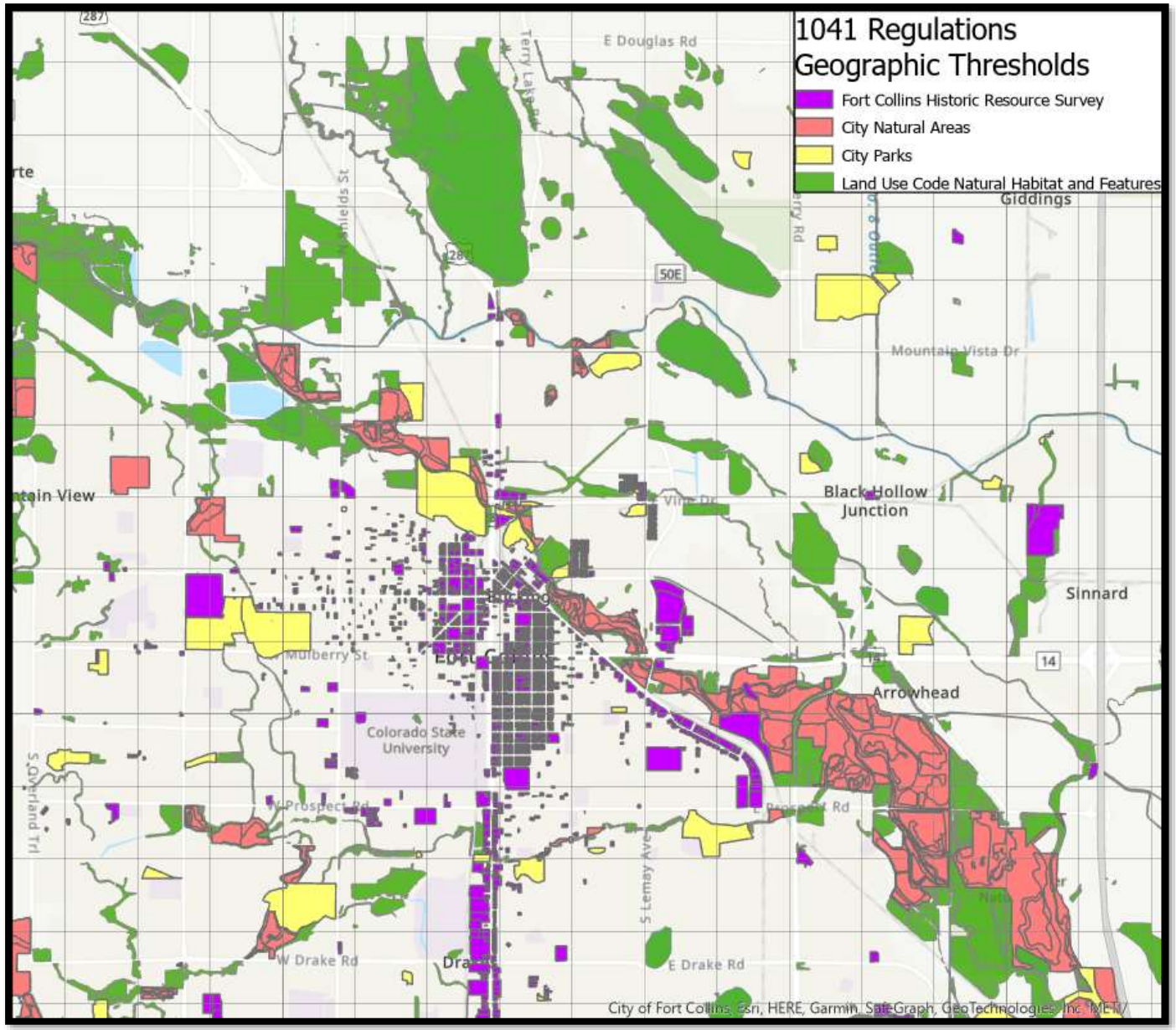
klongstein@fcgov.com

City of Fort Collins

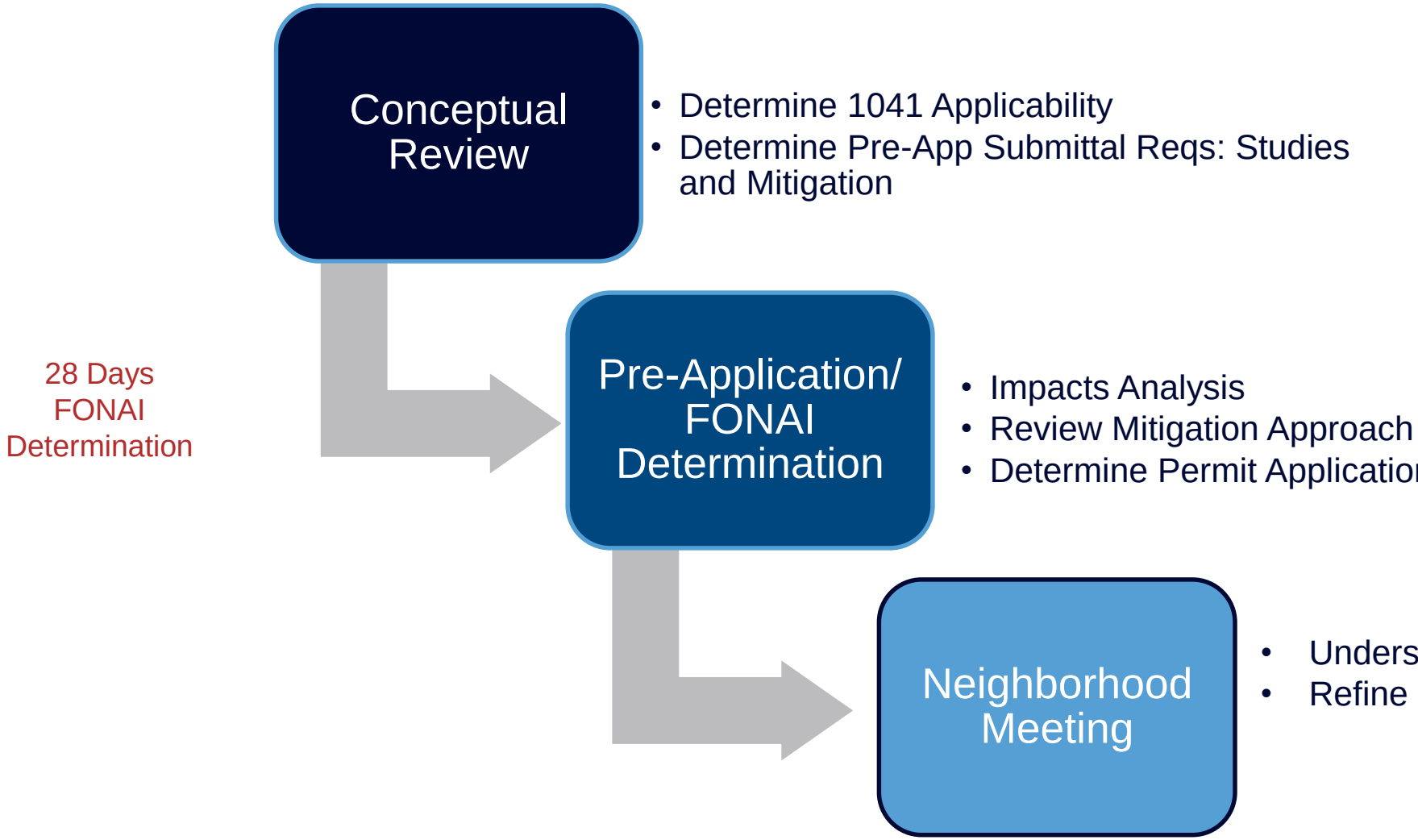
BACKUP SLIDES

Parameters	SPAR	1041 Regulations
Applicability	only public entities covered by statute	Council designated activities include water, wastewater and highway projects
Pre-Submittal Required	60 Day total review period	adds a 28-day requirement for Director to make FONAI determination and a 60 day time frame for staff to review and deem application complete
Review Standards	Evaluates Location, Character and Extent And conformity with the City's Comprehensive Plan	Cumulative impact analysis
Decision Maker	Planning and Zoning Board Decision Can Be Overruled	City Council is the sole decision maker Decision is binding
Financial Security Required	None	More detailed requirements regarding inspection and monitoring of projects.

1041 Parameters	Version 1 (June 2022)	Version 2 (October 2022)
Pre-Submittal Required	No specific time requirement	adds a 28-day requirement for Director to make FONAI determination and a 60-day time frame for staff to review and deem application complete
Using Term Significant	Used in various standards and as a way to differentiate projects subject to the regulations	Reworking of the FONSI to become the FONAI or finding of negligible adverse impact. 1.) Change from a significant impact standard to a review of whether there are adverse impacts of any kind. To the extent there are adverse impacts, mitigation can compensate for the adverse impacts in order to meet a standard.
IGAs	Provided as an option to reduce procedural burden on applications	Section Removed
Thresholds	No specific thresholds	Narrowing of the scope of projects to which the 1041 regulations apply. They include City Parks, Natural Areas, Natural Habitat Buffer Zones, Cultural resources
Exemptions	Used current definition of development to determine which projects would be subject to regulations. Definition contains exemptions for CDOT and utility work within the ROW or existing easements	update the definition of development to include work with right away and existing easements; included a new exemption for private development required to perform utility or roadwork as part of development project subject to LDC
Arterial & Collector Hwys, Interchanges		Added geographic based thresholds to designated activities 1. Are located on (or cross through) an existing or planned future City natural area or park, whether developed or undeveloped; or 2. Are located within an existing or potential future buffer zone of a natural habitat or feature, as defined in the Land Use Code; or 3. Have potential to adversely impact historic resources.
New Water & Sanitation		
Water Extensions		
Decision Maker	Administrative permit and Full permit	Eliminated the administrative permit; made City Council the sole decision maker
Financial Security Required	Yes	1.) Language that allows the City to retain third party experts to assist in review at the applicant's cost. 2.) More detailed language regarding inspection and monitoring of projects.


1041 Regulations
Geographic Thresholds
Fort Collins Historic Resource Survey
City Natural Areas
City Parks
Land Use Code Natural Habitat and Features
E Douglas Rd
Giddings
50E
Mountain Vista Dr
Black Hollow
Junction
Sinnard
14
Arrowhead
Mulberry St
Colorado State
University
W Prospect Rd
E Prospect Rd
S Lemay Ave
W Drake Rd
E Drake Rd
City of Fort Collins, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/

Proposed Pre-Application Process



Proposed Approach: Exemptions

Operations and Maintenance

Private Development Subject to LUC

Approved Development with Vested Rights

Revised Approach: Definitions & Exemptions

Operations and Maintenance

Approved Development with Valid Building Permit

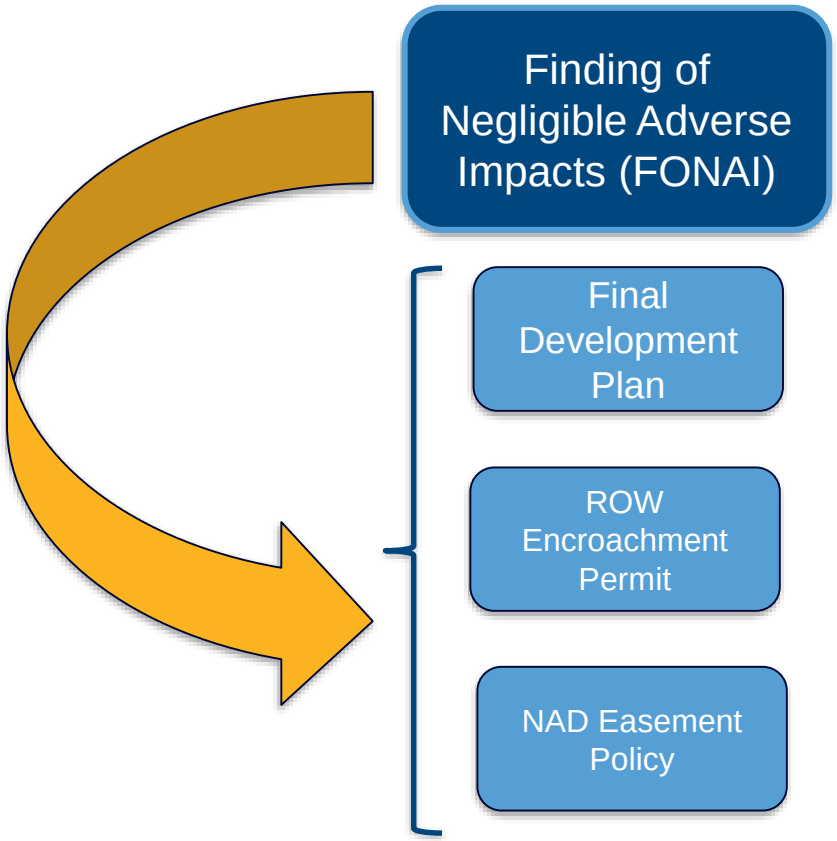
Approved Development with Vested Rights

Does Not Meet Definition of Development

UPDATES Definition of Development include:

1. CDOT projects within existing ROW
2. City or Public utility work within existing easements/ ROW

Revised Draft: Permit Hierarchy



Full Permit

City Council as Decision Maker

City NAs or Parks

NHBZs

Historic/Cultural Resources

November 7, 2022

WORK SESSION AGENDA ITEM SUMMARY

City Council

STAFF

Tyler Marr, Deputy City Manager
LeAnn Williams, Director, Recreation

SUBJECT FOR DISCUSSION

Southeast Community Center and Aquatics Update.

EXECUTIVE SUMMARY

The purpose of this work session is to provide an update on the options for the Community Capital Improvement Program (CCIP) funded Southeast Community Center with Outdoor Pool project.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. Are Councilmembers supportive of pursuing a phased approach to the Southeast Community Center with aquatics to allow for continued conversations related to Poudre School District's land and the potential collocation of a Poudre River Public Library District Branch? **OR**

2. Do Councilmembers support moving forward with the facility described in the 2015 CCIP ballot measure at Fossil Creek Park, foregoing the potential partnerships for now?

BACKGROUND / DISCUSSION

On April 7, 2015, the voters of Fort Collins approved extending the .25% Building on Basics Capital Projects Sales and Use Tax for a period of ten years for the purpose of obtaining revenue for the "Community Capital Improvement Program" (CCIP) Capital Projects and Related Operation and Maintenance. The Southeast Community Center with Outdoor Pool was one of the projects approved by voters.

The Southeast Community Center with Outdoor Pool will build a Community Center in southeast Fort Collins focused on innovation, technology, art, recreation, and the creative process. The Center will also have a large outdoor leisure pool with water slides, sprays, jets, decks, a lazy river, and open swimming area. The approved project had $14M for construction and $230K per year for Operations and Maintenance (O&M) for five years.

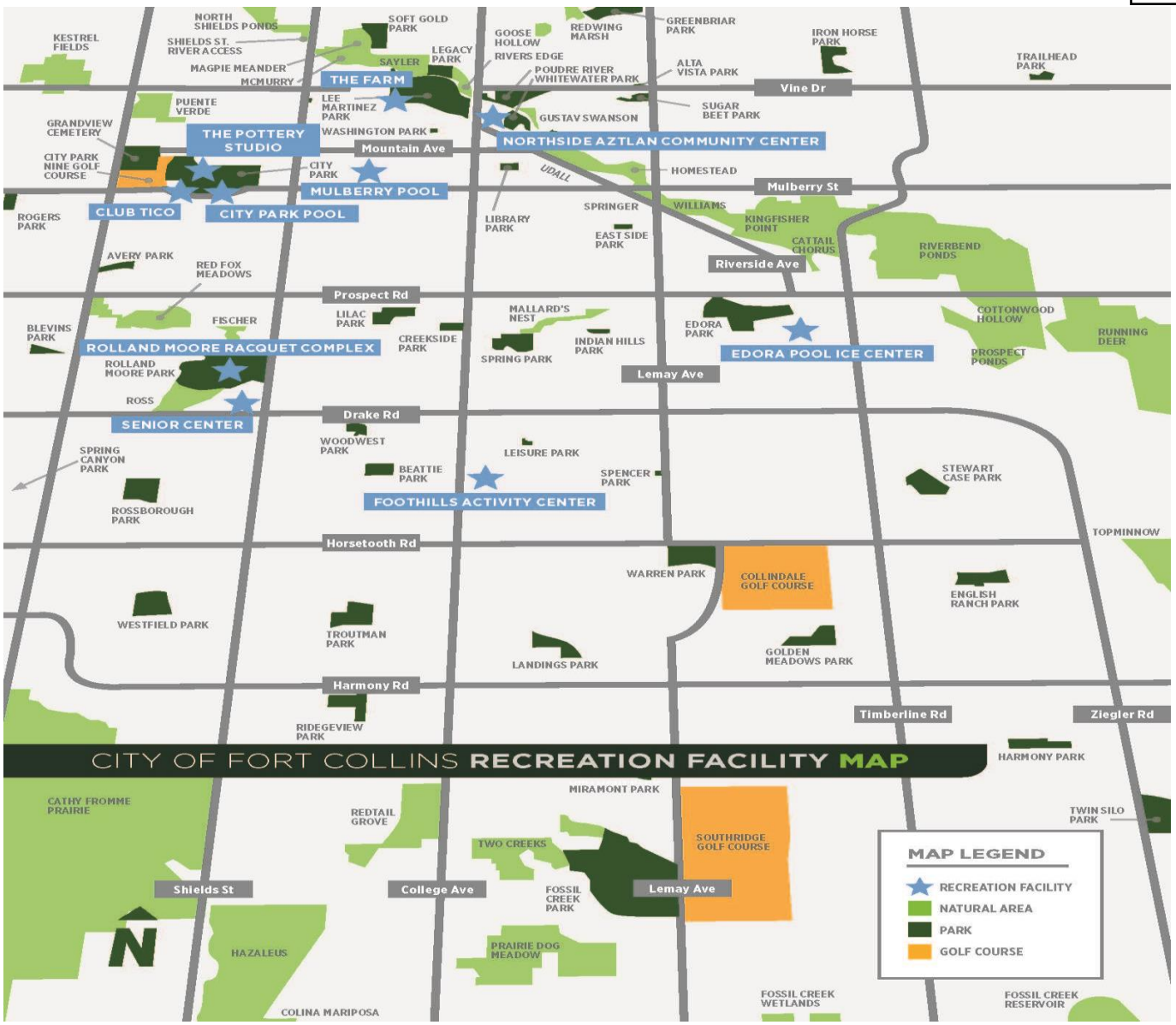
The Southeast Community Center was identified to be a full-service Community Center in the ReCreate Parks and Recreation Master Plan in 2021. The recommendation was to add a Community Center in the Southeast.

The 2021 ReCreate Master Plan also recommended adding two more pools to the city by 2040. According to the survey as part of the Master Plan, swimming pools were identified as the highest priority with paved, multi-use trails as second.

As a result of the FY22 BFO request to perform major work at Mulberry Pool, staff was directed to conduct a thorough study to determine the viability and efficiency of renovating an old facility like Mulberry Pool, alongside the overall aquatics needs in the community to make the most informed decision on future budget allocations. Staff engaged a consultant, Counsilman-Hunsaker in late 2021 to perform the study. The consultant visited each existing site in our system and evaluated them based on national and regional expectations for aquatics facilities, programs, and amenities. Councilman-Hunsaker issued the following guidelines:

1. The City's aquatic system should provide the community with options for public lane swim, aquatics exercise, aquatic instruction and other programs including specialized training and competition.
2. Counsilman-Hunsaker recommended a balanced system to support all user groups.
3. The balanced system includes both indoor and outdoor water, even in colder climates.

Geographically, the recreation system is concentrated in the northern region of Fort Collins, with no aquatics facilities south of Drake and no recreation facilities south of Horsetooth Road, as illustrated in the two maps below:



In addition to observations and metrics for each facility, Counsilman-Hunsaker reached the following key findings:

1. Need for aquatics amenities in the southeast quadrant of the city
2. Need for additional training (lap lanes), 6 at current population and 8 based on 2025 projected population
3. Need for additional recreation water
4. Leverage the existing user group relationships to support the additional facilities and amenities.
5. Additional investment in Mulberry pool not suggested

Staff has been working with existing user groups and partners to potentially address the identified aquatic gaps with the build of the Southeast Community Center with Outdoor CCIP project.

Staff presented these findings at a Council work session on March 23, 2022. The feedback from that work session was:

1. Leverage the existing user group relationships to support additional facilities and amenities
2. Fair share approach to capital and O&M
3. Not invest another 3-5 million in Mulberry Pool

As a result of the work session, staff began discussions with local partners to add additional aquatic capacity to the CCIP Southeast Community Center with Outdoor Pool and worked with Perkins and Will, consultants, to identify the cost of the base ballot project and the base ballot project with additional aquatic and recreation amenities.

Staff presented the findings of both capital cost and ongoing O&M to the Council Finance Committee on August 1, 2022. Feedback from that meeting was:

1. ReCreate Master Plan Data – how does it tie into the aquatic gaps identified and the build of the Southeast Community Center
2. Opportunity cost? What aren't we doing if we allocate additional funding to the Southeast Community Center?
3. What are the usage numbers at our facilities? Who is using them?
4. How much water do our current aquatic facilities use per year?
5. Fair share approach for capital and O&M
6. Detailed O&M for Southeast Community Center

Based upon the feedback received and data and recommendations from the ReCreate Master Plan and Aquatics Study, staff has been having numerous conversations with partners related to the use of the preferred land and the ability of partners to contribute to the master-plan identified project in both capital and O&M. As a result of those discussions and what partners are currently able to contribute, staff is recommending the City build a project that has the ballot required items, including outdoor leisure aquatics, a small community center, and potentially outdoor lanes.

Staff further recommends pursuing a phased approach that could add both indoor training lanes, indoor leisure aquatics and other master plan identified amenities given funding is not currently available for that scale of project. Pursuing phasing allows for conversations to continue with PSD related to using or purchasing their land, which is the preferred site, and allows the Library District's conversations around collocating a branch on that site to continue as well. Bringing subsequent phases of the project to fruition would likely require the use of the CCIP renewal or some other revenue source. If Council does not want to commit to phasing this project, staff recommends that the project proceed with the ballot described amenities at Fossil Creek Park.

Staff will present the following costing options and projections for Council's information to help inform a decision as to whether phasing is supported.

Option 1: Ballot Project

Capital Cost: $16.5M

O&M: Annual City Operation Expenses - $1,146,169. Annual Projected Revenue - $689,174. Difference --($456,995). Cost Recovery – 64%

Option 1A: Ballot Project + 8 outdoor lap lanes

Capital Cost: $20.7M

O&M: Annual City Operating Expenses - $1,146,169. Annual Projected Revenue - $749,368. Difference - -($396,801) Cost Recovery – 65%

Option 2: Ballot Project + Indoor Aquatics and Library – Proposed for phasing

Capital Cost: Total Project - $66.3M (City portion ~$42-44M)

O&M: Annual City Operation Expenses - $1,883,913. Annual Projected Revenue - $1,273,505. Difference - -($610,413). Cost Recovery – 68%

NEXT STEPS

Based on feedback from Council, staff will either move forward with the design of the Southeast Community Center with Outdoor Pool CCIP project or continue conversations with partners with a phased project in mind, working to secure an option to build on PSD's land.

ATTACHMENTS

1. Presentation

Southeast Community Center and Aquatics Build-out

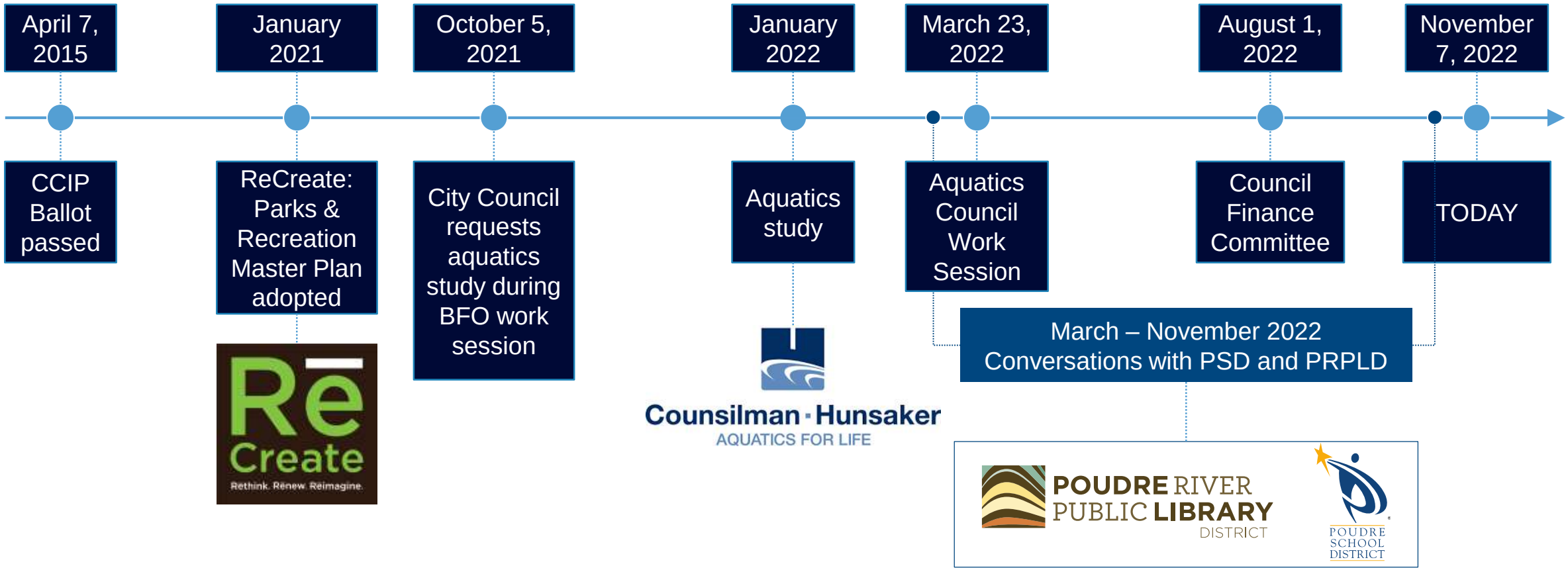
Tyler Marr, Deputy City Manager
LeAnn Williams, Director, Recreation

- Is City Council supportive of pursuing a phased approach to the SE Community Center with outdoor aquatics to allow for continued conversations related to Poudre School District's land and the potential collocation of a Poudre River Public Library District branch?

OR

- Does Council support moving forward with the facility described in the 2015 CCIP ballot measure at Fossil Creek Park, foregoing the potential partnerships for now?

Timeline: How we got here



Map of Existing Aquatic Facilities

- Existing aquatic facilities are concentrated in the northern half of the city
- Don’t meet the demand of residents for both indoor/outdoor leisure and indoor/outdoor lap lanes
- The senior center pool is open only to adults 18 and over

Fossil Creek Park

- Identified in 2013 feasibility study and 2020 Master Plan
- Small footprint for a one-story facility
- Parking lot expansion
- Could support base project with outdoor lanes
- No opportunity for partners at this site
- Land has been identified as best option for a pickleball complex in an existing community park per Park Planning and Development

Land adjacent to Fossil Ridge High School

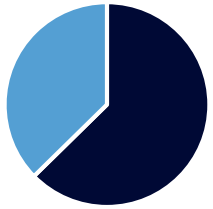
- Identified in 2013 feasibility study as best option
- Large acreage
- Could support large and/or co-located facilities
- Requires partnership with Poudre School District
- City staff preferred site
- Opportunity to co-locate with Poudre River Public Library District

Aquatic Study Findings:

- Need for aquatic amenities in the southeast quadrant of the city
- Need for 6-8 additional training (lap) lanes
- Need for additional recreational water (leisure pool, lazy river, slides)
- Opportunity for partnership to meet community need

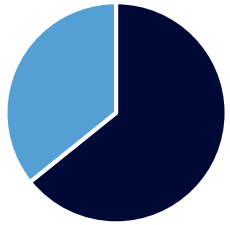
Aquatic Facility Usage Numbers

Mulberry Pool 2019



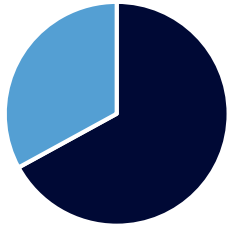
▪ Available hours for rental ▪ PSD hours

Mulberry Pool 2021



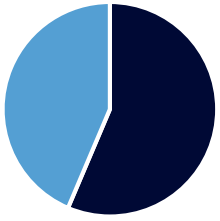
▪ Available hours for rental ▪ PSD hours

Mulberry Pool 2022 to-date



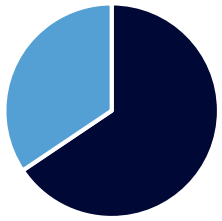
▪ Available hours for rental ▪ PSD hours

EPIC 2019



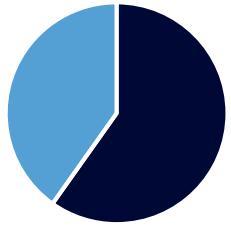
▪ peak hours for the year ▪ PSD hours

EPIC 2020



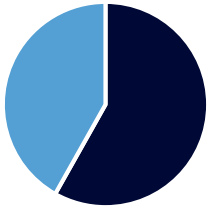
▪ Available hours for rental ▪ PSD hours

EPIC 2021



▪ Available hours for rental ▪ PSD hours

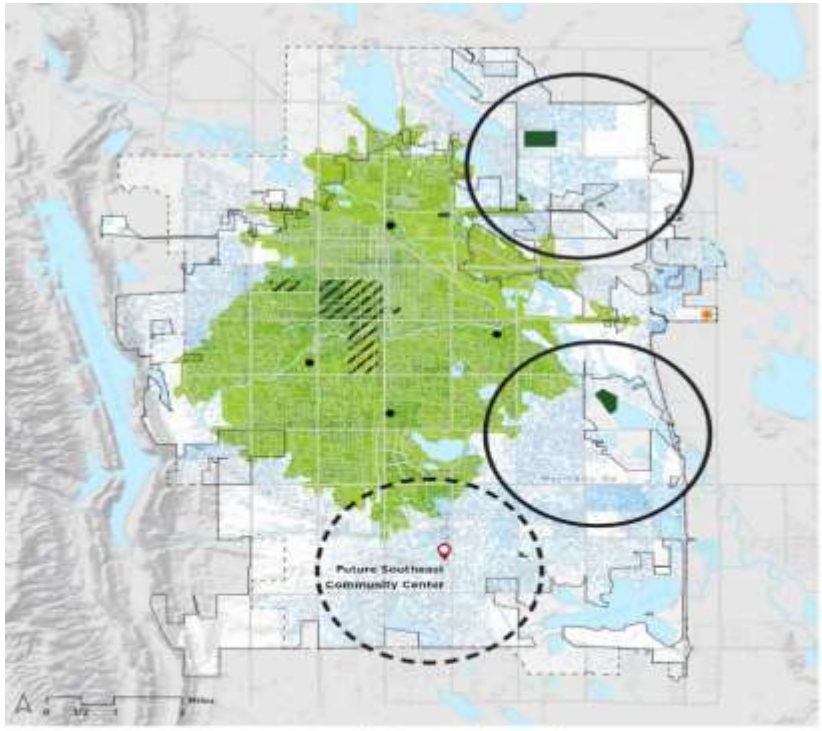
EPIC 2022 to-date



▪ Available hours for rental ▪ PSD hours

Community & Neighborhood Recreation Centers

+3 by 2040

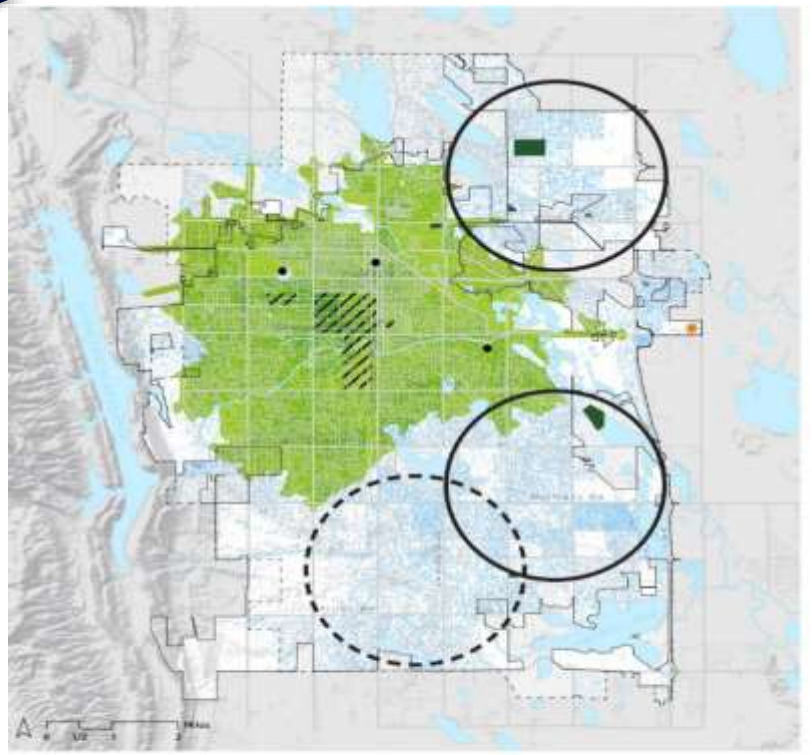


Community Centers — Access Standard — 5-Minute Drive

Priority Investment Rating was 197 Paved, Multi-use trails were second at 157

Pools

+2 by 2040



Pools — Access Standard — 5-Minute Drive

Operations & Maintenance (O&M)

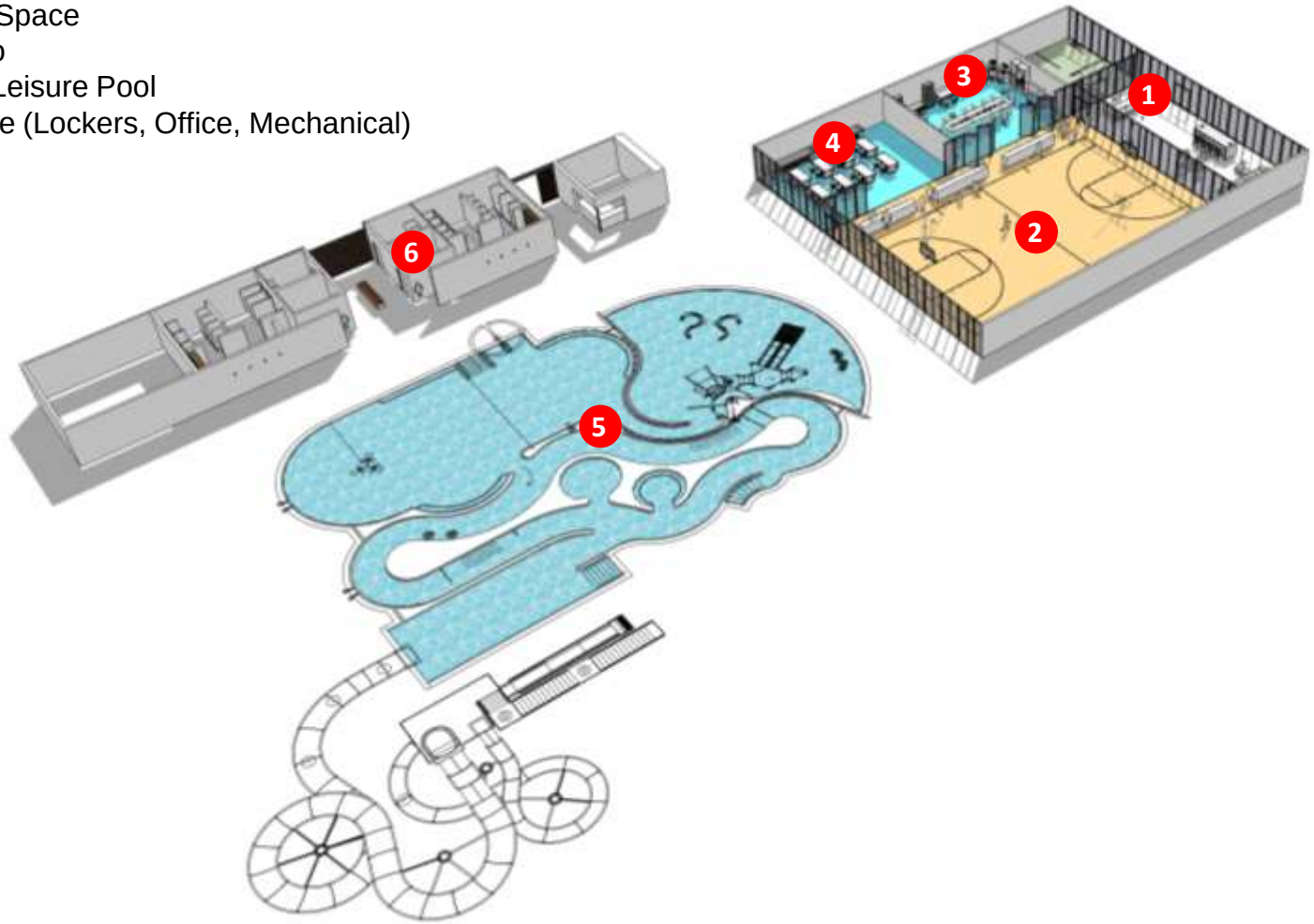
- Operations & Maintenance: estimates provided from consultants
- General Fund (GF) subsidy is conservative – fees can be adjusted to reduce subsidy
- Revenue projections are conservative
- Potential for O&M cost share with partners
- 2024-28: CCIP O&M will reduce GF subsidy by $230K each year
- Full O&M 2029 and beyond

Option 1: Ballot Project

Community Activity Center and Outdoor Aquatics

Space Key

1. Main entry, Lounge and Offices
2. Multi-Activity Recreation and Gym Space
3. Creation Space
4. Art Studio
5. Outdoor Leisure Pool
6. Poolhouse (Lockers, Office, Mechanical)



Total Project Costs	
Community Activity Center • Entry, Offices and Lounge • Multi-Activity Gymnasium • Creation Space • Art Studio	$7,660,224
Outdoor Leisure Pool Complex	$7,526,250
Site Costs	$1,274,063
Total Project Budget	**$16,460,537**

Operations and Maintenance	
Annual Operating Expenses	$1,146,169
Annual Projected Revenue	$689,174
Difference	-($456,995)
Cost Recovery	64%

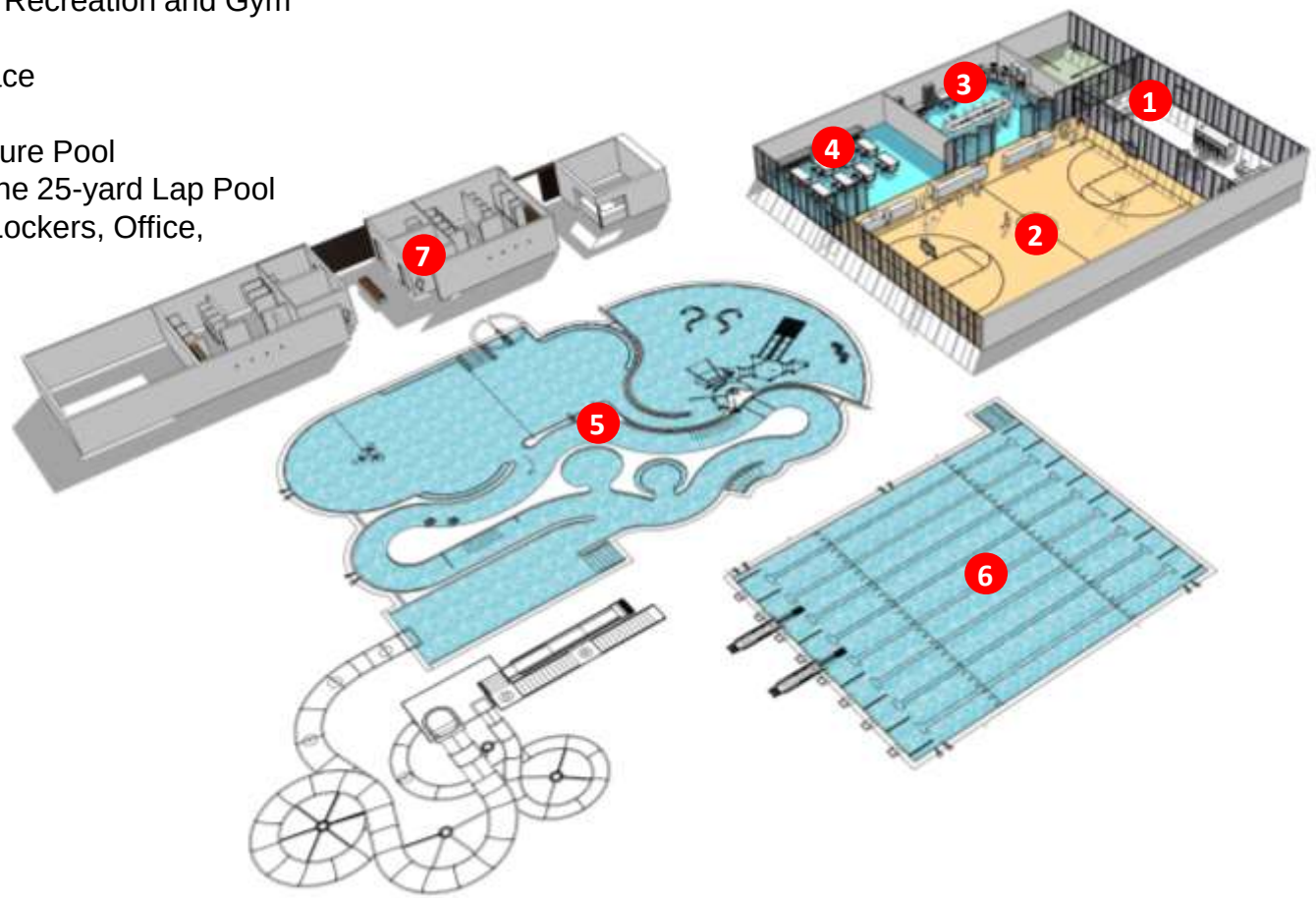
Option 1A: Ballot Project +

Outdoor Lap Lanes

Community Activity Center and Outdoor Aquatics

Space Key

1. Main entry, Lounge and Offices
2. Multi-Activity Recreation and Gym Space
3. Creation Space
4. Art Studio
5. Outdoor Leisure Pool
6. Outdoor 8-lane 25-yard Lap Pool
7. Poolhouse (Lockers, Office, Mechanical)

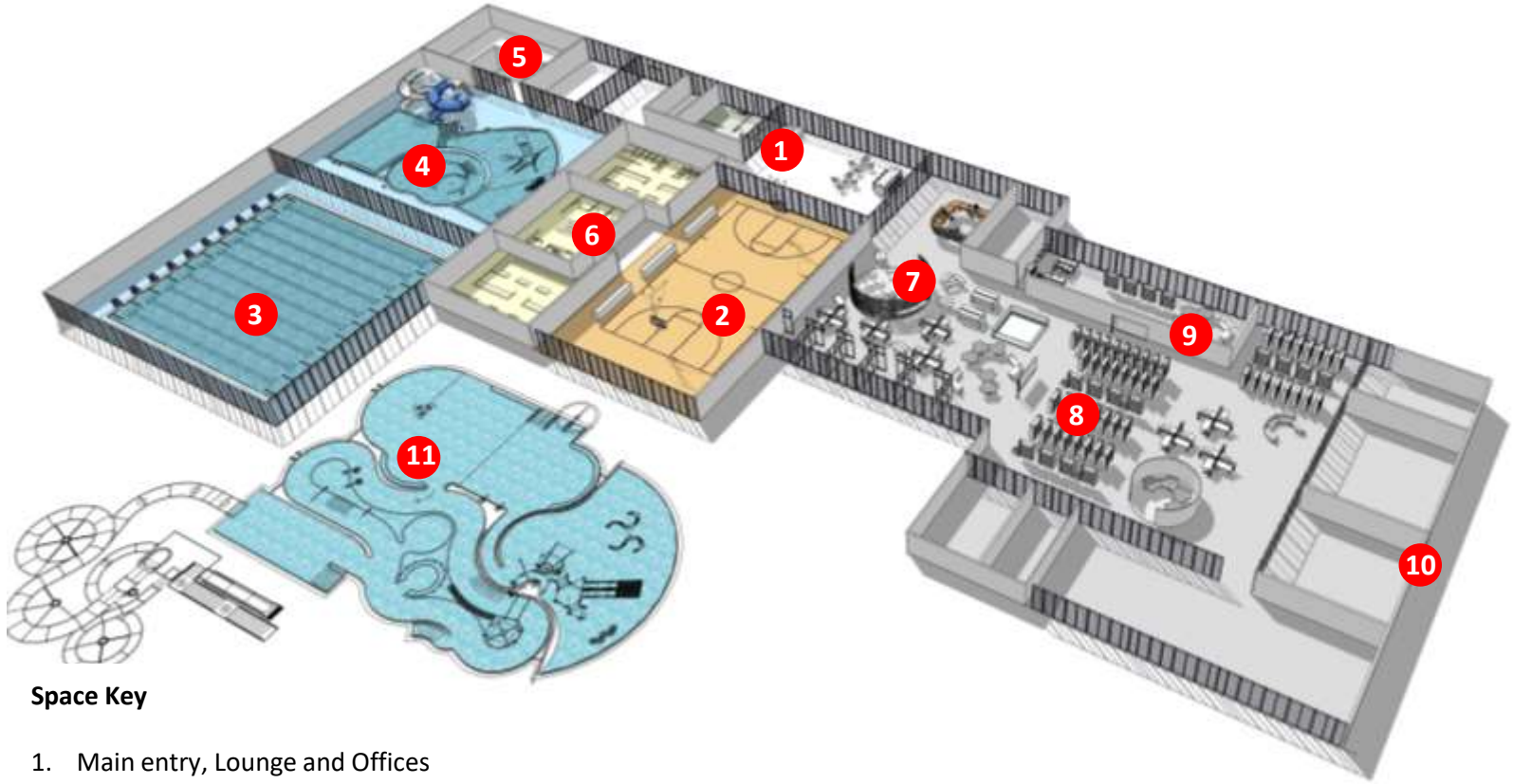


Total Project Costs	
Community Activity Center • Entry, Offices and Lounge • Multi-Activity Gymnasium • Creation Space • Art Studio	$7,660,224
Outdoor Pool Complex • Leisure Pool ($7,526,250) • 8-Lane Lap Pool (4,299,750)	$11,826,000
Site Costs	$1,274,063
Total Project Budget	**$20,760,287**

Operations and Maintenance	
Annual Operating Expenses	$1,146,169
Annual Projected Revenue	$749,368
Difference	-($396,801)
Cost Recovery	65

Option 2

Community Activity Center, Indoor & Outdoor Aquatics and Library



Space Key

1. Main entry, Lounge and Offices
2. Multi-Activity Recreation and Gym Space
3. Indoor Leisure Pool
4. Indoor 10-lane Lap Pool
5. Aquatic Support
6. Lockers and Support
7. Library Entry, Info Desk
8. Adult Collections, Study, Collaboration
9. Children's Reading and Activity Area
10. Innovation areas, Creator & maker Space
11. Outdoor Leisure Pool

Total Project Costs	
Community Activity Center • Entry, Offices and Lounge • Multi-Activity Gymnasium	$4,944,632
Indoor/Outdoor Pool Complex • Indoor Leisure Pool ($14,506,678) • Indoor 10-lane Lap Pool ($15,718,725) • Outdoor Leisure Pool ($7,526,250)	$37,751,653
Library (paid for the Library)	$20,532,278
Site Costs	$3,091,500
Total Project Budget	**$66,320,063**

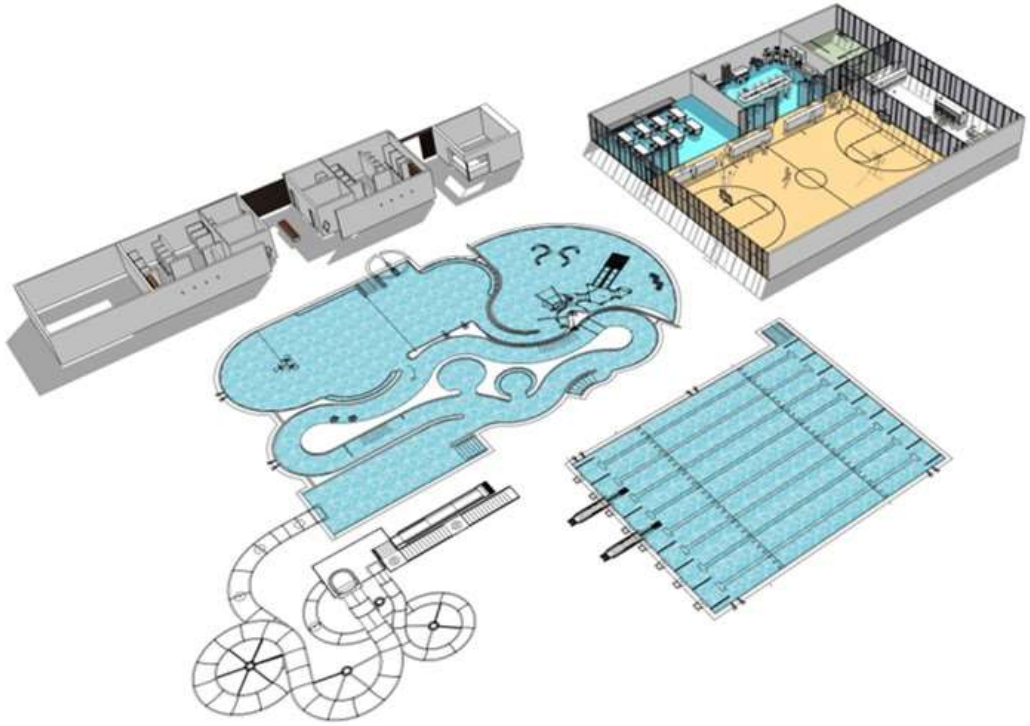
Operations and Maintenance	
Annual Operating Expenses	$1,883,913
Annual Projected Revenue	$1,273,505
Difference	-($610,413)
Cost Recovery	6

Considerations:

- Option 2 (Phased Approach) would cost $2.1M annually
  - ➢ Significant tradeoffs
- Believe there is strong potential for partnerships
- Committing to phasing important to keeping partnership dialogue open
- Front loading project in CCIP one potential option

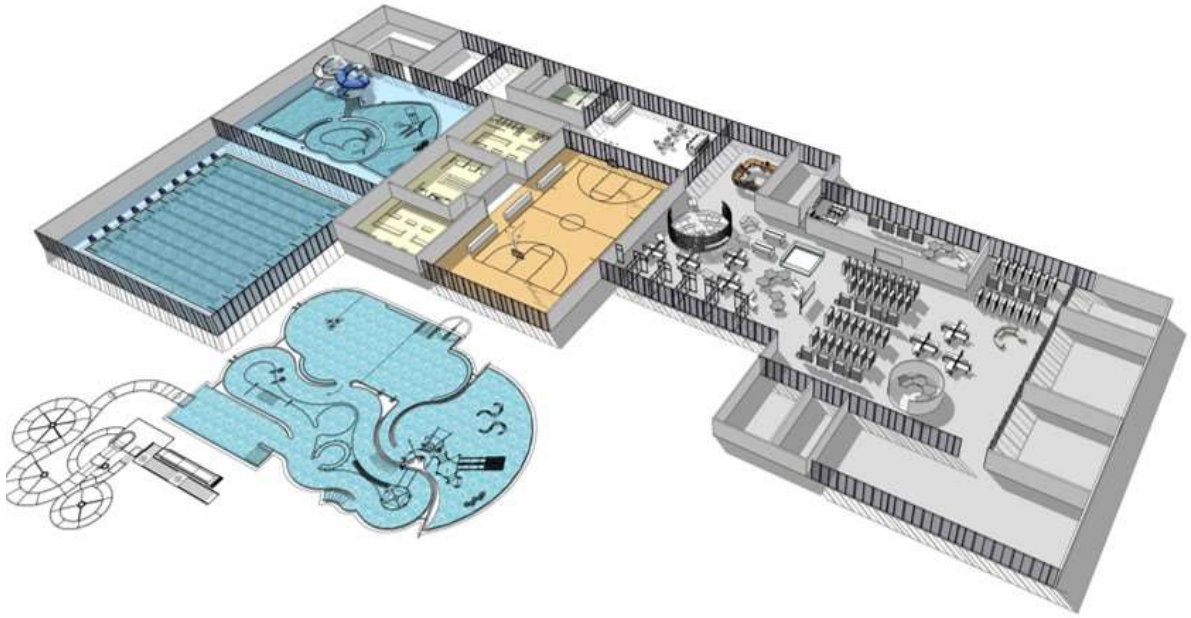
Option 1 or 1A

Ballot Project



Option 2 | Phased Approach

Community Activity Center, Indoor & Outdoor Aquatics, and Library



- Is City Council supportive of pursuing a phased approach to the SE Community Center with outdoor aquatics to allow for continued conversations related to Poudre School District's land and the potential collocation of a Poudre River Public Library District branch?

OR

- Does Council support moving forward with the facility described in the 2015 CCIP ballot measure at Fossil Creek Park, foregoing the potential partnerships for now?

QUESTIONS?

Backup slides

AQUATIC FACILITY USE

EPIC
2019: 121,513
2020: 85,151
2021: 109,701
2022: 95,531 to date

Mulberry Pool
2019: 40,105
2020: 12,767
2021: 29,364
2022: 19,532 to date

Senior Center
2019: 4,408
2020: 924
2021: 678
2022:3,150 to date

City Park Pool
2019: 42,160
2020: 0
2021: 45,035
2022: 45,124

AQUATIC FACILITY WATER USE (in gallons) with annual cost

EPIC (includes Ice but majority is pool)
2019: 6.1M - $18,911
2020: 5.7M - $17,982
2021: 5.4M - $25,907
2022 to date: 3.4M - $11,450

Mulberry Pool
2019: 2.4M - $8,680
2020: 1.6M - $6,410
2021: 1.6M - $6,602
2022 to date: 1.3M - $7,087

Senior Center (entire facility)
2019: 1.6M - $6,431
2020: 661K - $3,803
2021: 667K - $3,976
2022 to date: 1M - $4,328

City Park Pool
2019: 1.1M - $8,634
2020: 848K - $7,597
2021: 1.5M - $9,610
2022 to date: 840K - $6,387

Staff Recommendation

Ballot Language

- Ballot Language only
- Includes:
  - Outdoor leisure aquatics
  - Innovation piece

Could add a second phase to this facility that would address master plan recommendation and aquatic gaps

Ballot Language + Outdoor Lap Lanes

- Ballot Language +
- Add outdoor lap lanes

Ballot Language + Partners + Address Aquatic Gaps

- Ballot Language +
- Indoor leisure aquatics and 10 lap lanes (if PSD partnership)
- Innovation: Library (partner with PRLD)
- Only location is next to Fossil Ridge HS for Library Partnership
- Phased approach for indoor facility

November 7, 2022

WORK SESSION AGENDA ITEM SUMMARY

City Council

STAFF

Marcy Yoder, Neighborhood Services Manager
John Feyen, Assistant Police Chief
John Duval, Legal

SUBJECT FOR DISCUSSION

Overview of Public Nuisance Ordinance.

EXECUTIVE SUMMARY

The purpose of this item is for Council to discuss a new public nuisance ordinance (PNO) that allows for a clearer, broader definition of public nuisance and adds new enforcement mechanism for abating public nuisances and chronic nuisance properties. The new PNO would allow staff to address the current community issues and nuisance situations more effectively.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. What questions does Council have regarding the draft public nuisance ordinance?

BACKGROUND / DISCUSSION

Introduction

The City adopted in 2000 an ordinance for the abatement of public nuisances (PNO) to address the nuisance issues being experienced at that time with few significant amendments to the PNO since then. Many of the issues were in residential areas and were focused on noise nuisances and other nuisances outlined in the Code Chapter 20, such as tall weeds and grasses, rubbish, inoperable vehicles, etc.

Those issues continue to exist, but we have seen an expansion of nuisance issues that include drug-related activities, gatherings that result in assaults, firearms being discharged, animal control issues, fire code issues including illegal fireworks and outdoor burning, building code violations, abandoned buildings, and obstruction of sidewalks and streets.

The proposed Ordinance would repeal the current PNO and reenact a new PNO which, if adopted, will expand the scope of public nuisances, add new enforcement tools, and simplify the administrative process for utilizing these tools.

History of current Public Nuisance Ordinance

Originally developed in early 2000, the purpose of the current PNO was to remedy chronic problems at properties in Fort Collins using a civil abatement process where citing specific, individual nuisance violations of the Code were found to be ineffective in abating the chronic problems that were adversely affecting neighborhoods

The current PNO ordinance in Municipal Code generally provides for the following enforcement steps to be taken before the civil abatement process can be used:

1. The City first identifies a property that might be becoming a public nuisance. This could happen in one of several ways, including complaints from neighbors or a neighborhood group, a large number of nuisance violations (resulting in citations issued) which begin to show a pattern to a staff member, or the police department noticing a chronic problem and calling it to the attention of the Code Compliance staff.
2. The Code Compliance Case Manager then collects data about the potential nuisance property to determine how serious and chronic the problem is in comparison to similar properties in the City. If the property has multiple violations, the City Attorney's Office would also help to decide whether cause exists to file a civil abatement action in Municipal Court.
3. Notice is sent by mail to the property owner and/or tenants when the City begins the process of monitoring a location as a possible public nuisance. This initial letter notifies of the possibility of a public nuisance violation, informing the parties that two (2) more additional violations within 12 months (3 total) or 4 additional violations within 24 months (5 total) could result in the filing of a public nuisance action. During this time, the Case Manager would encourage the owner to work with the City, any tenants, and possibly neighbors to develop a voluntary mitigation/abatement plan or agreement in order to avoid future problems.

The focus of the current PNO has been to work with property owners to voluntarily resolve nuisances; however, if the owner is unwilling to resolve the problem through an abatement plan, the PNO provides the City with only the ability to file a civil abatement action against the owner in Municipal Court. Remedies would then be limited to obtaining a civil abatement order to compel the owner to abate the nuisance and a civil judgment to recover the City's costs in pursuing the civil abatement process.

This might include such things as ordering a particular tenant to be evicted, clean-up the property, or order that a certain person not engage in a certain kind of behavior. The process can also potentially result in a misdemeanor charge if someone knowingly ignored or disobeyed the Court's order. For example, if someone was ordered by the Court to clean up a property and did not follow the order, that person could then be prosecuted in Municipal Court, but only after the City has obtained the civil abatement order.

In practice, the utilization of the current PNO has been limited in recent years. This is partly a result of Code Compliance's focus on and high success rate of achieving voluntary compliance in the correction of most nuisance violations. Most of Code Compliance's cases do not ultimately result in the issuance of citations. However, more recently the scope of nuisance types that can be addressed in the current PNO is not broad enough to address the current community issues. Additionally, the prior case management process for public nuisance actions has proven to be administratively burdensome due to the requirements around tracking and individualized noticing to property owners for each violation that occurred that can form the basis for the current civil abatement action.

City staff has therefore recently analyzed the current PNO and determined that an update to it is necessary in order to address the current nuisance issues and to add new processes and enforcement tools that are more practical from both an enforcement and administrative standpoint. For example, this includes

expanding the proposed PNO to apply to “nuisance activities” that include criminal violations under the City’s Code and state law and building and fire code violations.

Research

A review of other cities’ public nuisance and chronic nuisance property ordinances was conducted to gain a better understanding of how other jurisdictions are addressing and resolving their public nuisances and chronic nuisance properties. The jurisdictions we contacted in Colorado were Boulder and Parker. The Town of Parker is currently the only other jurisdiction in the state with a chronic nuisance property ordinance. Outside of Colorado, we reviewed the chronic nuisance ordinances in the following cities: Cincinnati, OH; Kansas City, MO; Spokane, WA; Seattle, WA; Portland, OR; Elgin, IL; Springfield, IL; and Milwaukee, WI.

Jurisdiction	Definition of Chronic Nuisance Property
Parker, CO	3 or more occasions where nuisance activity is observed in 60 days or 7 or more in 12 months
Cincinnati, OH	3 or more nuisance activities occurred at the premises in a 30-day period
Kansas City, MO	3 or more police responses to nuisance activity in 30 days, 7 or more in 180 days
Spokane, WA	3 or more nuisance activities observed on a property in 60 days, 7 or more in 12 months
Seattle, WA	3 or more nuisance activities exist or have occurred on a property in 60 days, 7 or more in 12 months
Portland, OR	3 or more nuisance activities exist or have occurred on a property in 30 days
Elgin, IL	3 or more instances of any one or any combination of nuisance activity in 12 months based upon 3 separate factual events that have been independently investigated
Springfield, IL	3 or more separate inspections or incidents w/in 24 months that have been the source of 3 or more violations as determined by an admin hearing officer; OR 2 or more of certain criminal activities in a 60-day period or 3 or more in a 365-day period
Milwaukee, WI	3 or more responses from the police department for "nuisance activities" in 30 days

Based on our findings. we determined the appropriate threshold to establish a chronic nuisance property is 3 or more nuisance activities exist or have occurred on a property within a 90-day period or 7 or more nuisance activities within a one-year period.

Proposed PNO

Public Nuisance, Chronic Nuisance Property, & Nuisance Activity

The proposed PNO regulates two types of nuisances: i) a “public nuisance”; and ii) a “chronic nuisance property”. The existence of each of them depends on the occurrence or existence of multiple or continuing “nuisance activities” on a property.

A “nuisance activity” is defined in the PNO to include 68 categories of various criminal and civil violations

happening on the property that individually or in combination result in either a public nuisance or chronic nuisance property. These nuisance activities include:

- civil infractions under the City Code, such as tall weeds and grass, rubbish, and inoperable motor vehicles;
- minor misdemeanor violations under the City Code, such as unreasonable noise, bodily waste, and nuisance gatherings;
- more serious misdemeanor violations under the City Code, such as resisting arrest, assault, disorderly conduct, and building and fire code violations; and
- misdemeanors and felonies under State law, such as criminal mischief, assault, harassment, arson, firearms offenses, and drug-related offenses.

A "public nuisance" is more generally defined, while the definition of a "chronic nuisance property" is tied to a certain number of nuisance activities occurring on a property within a set period of time.

A "public nuisance" exists when repeated nuisance activities (meaning more than one) have occurred on the property or a continuing nuisance activity exists on it causing an unreasonable risk of harm or injury to the public health, safety, or welfare. This would include circumstances where the nuisance activities are unreasonably injuring, damaging, annoying, inconveniencing, or disturbing the peace of members of the public with respect to their: (i) comfort, health, repose, or safety; or (ii) free use and comfortable enjoyment of their property and of sidewalks, streets, or other public spaces near the offending property.

A "chronic nuisance property" exists when:

- 3 or more nuisance activities have occurred on the property within 90 days, or 7 or more nuisance activities have occurred within 1 year, with each activity occurring on a separate day, but not applicable to a property having multiple residential units under common ownership (i.e., apartment complex);
- there are multiple residential units on the property under common ownership and 6 or more nuisance activities have occurred within 90 days or 10 or more nuisance activities have occurred within 1 year, with each activity occurring on a separate day;
- 2 or more nuisance activities involving drug-related activity have occurred on the property within 30 days, with each activity occurring on a separate day; or
- the property is an "abandoned property" and any number of nuisance activities have occurred or exist on it. An "abandoned property" is defined as a property where no one is asserting or claiming any ownership or legal control over it.

Enforcement Tools

The proposed PNO is designed to provide the City with alternative tools for enforcement depending on the circumstances.

The most basic of the tools is to provide the property owner and others in possession of the property, such as tenants, with written notice of the existence of the public nuisance or chronic nuisance property. The purpose of the notice is to give the owner and others noticed the opportunity to abate the nuisance activities promptly and voluntarily or to work with the City in coming up with a plan to do so.

If the notice is unsuccessful in getting the cooperation of the person(s) responsible for the property, the next step might be to issue a citation to the noticed persons for a civil infraction. The punishment for the infraction would be a penalty assessment of $250 for the first offense, $500 for a second offense within 60 days, $1,000 for a third offense within 120 days, and $2,000 for fourth and subsequent offenses within 1 year. If the person cited does not voluntarily pay the penalty assessment stated in the citation, the civil infraction would be tried in Municipal Court.

If the notice and any citations for the penalty assessment civil infraction are unsuccessful in remedying and stopping the nuisance activities, the next step might be to consider issuing a citation to the property

owner or other responsible persons for a misdemeanor offense. This offense would be subject to the City's same maximum penalties it imposes for other misdemeanors, which are a fine and court surcharge not to exceed $3,000 or 180 days in jail, or both.

Whether the responsible persons are cited for a civil infraction or misdemeanor offense, each separate day a public nuisance occurs or exists on a property, or the property continues to be a chronic nuisance property, is considered a separate infraction or offense.

If the notice and any citations for the civil infraction and misdemeanor offense are unsuccessful, the tool remaining in the PNO would be for the City to file a civil abatement action in Municipal Court against the property owner and any other responsible persons. Under this civil proceeding, the City would be asking the Court to issue temporary and permanent abatement orders requiring the owner and other responsible persons to abate the public nuisance or chronic nuisance property. The Court would be able to enforce its order under its contempt powers. Also, if an abatement order is issued and the person against whom it is directed fails to obey it, that is considered a misdemeanor violation under which the person could be arrested and prosecuted.

The City may also ask for the Court in the civil action to impose a civil penalty of not less than $100 but not more than $1,000 for each day the public nuisance or chronic nuisance continued to exist after the City served the initial notice to abate these conditions of the property. The City will then be entitled to a judgment for this civil penalty amount plus all its other costs, including attorney fees, that it incurred in pursuing its remedies under the PNO.

Other Significant PNO Provisions

The proposed PNO continues to include important and significant provisions that exist in the current PNO. These include:

- Preserving for the City's code enforcement officers the legal authority to enter the property to abate nuisances without a warrant when authorized under the Fourth Amendment.
- Preserving for code enforcement officers the legal authority to obtain a search warrant to inspect the property and abate a nuisance consistent with the Fourth Amendment.
- Stating that the PNO is not intended to limit or prohibit the City or anyone else to pursue other remedies to abate a nuisance as are available under any other laws.
- Preserving City's ability to file a lien against the property for the costs the City incurs in abating a nuisance.

The proposed PNO also adds new significant provisions, and these are:

- Describes the proof standards to be applied by the Municipal Court in determining whether an alleged nuisance activity occurred on the property – in criminal proceedings proof beyond a reasonable doubt and in civil proceedings proof by a preponderance of the evidence.
- States that misdemeanor and civil infractions violations under the PNO will be strict liability offenses not requiring proof of a culpable mental state, making these offenses easier to prove.
- States the City is not required in proving a nuisance activity that any person was cited, held liable for, or convicted in any court of the civil or criminal charge underlying the nuisance activity. However, the City will still be required to prove that the nuisance activity occurred by other evidence.
- States that if a person is held liable for or convicted in the courts for the charge underlying the nuisance activity and that decision is final, this is to be deemed conclusive evidence by the Municipal Court in proceedings under the PNO that the nuisance activity occurred, but the City will still be required to prove the activity occurred on the property.
- Allows the Municipal Court to consider as a mitigating factor in proceedings under the PNO that the defendant was the victim or person harmed by the nuisance activity or activities forming the basis for the public nuisance or chronic nuisance property, but only if the Court also finds: (i) the defendant or

someone acting on their behalf promptly reported the nuisance activity to law enforcement; and (ii) at the time of the activity, the defendant had reasonably effective means in place to prevent nuisance activities occurring on the property or to manage them if prevention not reasonably practicable. These means may include security cameras, security services, fencing, on-site personnel, and any other services, equipment, or facilities having as their function to prevent nuisance activities from happening on the property.

NEXT STEPS

Staff will incorporate feedback into the first reading scheduled for 11-15-22. The second reading is scheduled for 12-6-22.

ATTACHMENTS

1. Draft Ordinance
2. Presentation

TENTH DRAFT
(10-25-22)

ORDINANCE NO. , 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING AND REENACTING ARTICLE IX OF CODE CHAPTER 20 CONCERNING PUBLIC NUISANCES

WHEREAS, in 2000, the City Council adopted Ordinance No. 28, 2000, to add Article IX to Chapter 20 of the Code ("Article IX") to establish a process for abating public nuisances by the City filing a civil action in Municipal Court asking the Court to issue civil orders requiring the property owner or others responsible to abate the public nuisance; and

WHEREAS, the aim and focus of the IX was primarily to add an enforcement tool to those already available to address nuisances on privately-owned properties, such as noise violations, rubbish accumulation, tall weeds and grass, inoperable motor vehicle, and similar activities that affected the health, safety, and welfare of nearby properties and the public in general; and

WHEREAS, the intent was to use this enforcement tool for those properties having chronic-public-nuisance problems that were not being resolved by the then existing enforcement tools; and

WHEREAS, there have not been any significant amendments to Article IX since 2000, so the only tool it currently provides is the civil abatement process: and

WHEREAS, since 2000 the City's population has grown from just over 118,000 to over 170,000 and with this growth has come increased crime, including a significant increase in the number, severity, and dangerousness of activities on and conditions of privately-owned properties that threaten and harm the health, safety, and welfare of nearby properties, neighborhoods, and the public in general; and

WHEREAS, these more recent problematic activities and conditions have included the occurrence of more serious crimes, such as unlawful drug use, firearm violations, assaults, harassment, human wastes, and similar offenses; and

WHEREAS, Article IX has proven ineffective in preventing or abating these activities and conditions on properties due to its narrow scope, its lack of alternative enforcement tools, and because it has proven difficult to apply and use administratively as an enforcement tool; and

WHEREAS, City staff has researched what other communities experiencing nuisance problems similar to the City's have used as enforcement tools to prevent and abate these newer types of nuisances; and

WHEREAS, based on that research, City staff is recommending this Ordinance to expand the type of enforcement tools the City may use, to expand the type of activities and conditions on properties that constitute nuisance activities, and to provide enforcement processes that are administratively easier to use; and

WHEREAS, Chief Municipal Judge Jill Hueser has also reviewed the provisions of this Ordinance pertaining to the rules of procedure to be used by the Municipal Court in the civil abatement process and, pursuant to Section 1 of Charter Article VII, she is recommended to City Council that it adopt these provisions; and

WHEREAS, the Council has determined, and now finds, that the adoption of this Ordinance is necessary for the health, safety, and welfare of the public.

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 Article IX of Chapter 20 of the Code of the City of Fort Collins is hereby repealed and reenacted to read as follows:

ARTICLE IX. PUBLIC NUISANCES

Division 1. General

Sec. 20-110. Legislative purpose.

The abatement of local public nuisances for the protection of public health, safety, and welfare is a matter of purely local and municipal concern. The purpose of this Article is to eliminate public nuisances. The remedies provided in this Article are designed to eliminate public nuisances by removing property from a condition or conditions that either create an immediate need for abatement to protect the public health, safety, or welfare, or lead to consistent and repeated violations of state or municipal law. Another purpose of this Article is to require persons owning, leasing, or otherwise in control of property to be vigilant in preventing public nuisances on and in their property, to make them responsible for the use of their property by themselves, occupants, and trespassers, and to otherwise deter public nuisances.

Sec. 20-111. Definitions.

Unless the context clearly requires otherwise, the following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Abandoned property means a property over which the person owning, leasing, or otherwise in control of the property, or the agent of such person, no longer asserts control due to death, incarceration, or any other reason, and which property is either unsecured or subject to occupation by trespassers or other unauthorized individuals.

Abate means to bring to a halt, eliminate, prevent, or, where that is not reasonably practicable, to suppress, mitigate, or reduce.

Abatement agreement means a written contract between the City and a person owning or leasing a property on which there is a public nuisance or that has become a chronic nuisance property, or the agent of such person, in which contract the person agrees to timely take all corrective actions to abate the public nuisance or chronic nuisance property and to prevent them from reoccurring as agreed in the contract. Such corrective actions may include, without limitation and as applicable:

1. Effective tenant screening, leasing, and rule enforcement;

2. Implementing physical improvements for crime prevention;

3. Providing security for the property;

4. Evicting persons responsible for the nuisance activity;

5. Pursuing other remedies available under any lease or other agreement applicable to the property;

6. Promptly reporting nuisance activities to law enforcement; and

7. Regular cleaning, maintenance, and repair of the property and the buildings located on it.

Agent means any person legally authorized to act on behalf of or in place of the owner or lessee of a property, which may include, without limitation, a person providing property management services, a trustee, conservator, and personal representative.

Building means a structure with the capacity to contain, and is designed for the shelter of, humans, animals, or personal property of any kind. *Building* shall include, without limitation, any house, office building, store, warehouse, or any other residential or nonresidential structure of any kind, whether or not such structure is permanently affixed to the ground upon which it is situated, and any trailer, semi-trailer, trailer coach, mobile home, or other vehicle designed or used for occupancy by persons for any purpose.

Chronic nuisance property means:

1. A property where three (3) or more nuisance activities have occurred within a ninety (90) day period or seven (7) or more nuisance activities have occurred within a one (1) year period, with each activity occurring on a separate day, but this shall not include a property on which is more than one (1) residential unit that are all under common ownership;

2. A property that is more than one (1) residential unit that are all under common ownership where six (6) or more nuisance activities have occurred within a ninety (90) period or ten (10) or more nuisance activities have occurred within a one (1) year period, with each activity occurring on a separate day.

3. A property where two (2) or more nuisance activities involving drug-related activity have occurred within a thirty (30) day period, with each activity occurring on a separate day; or

4. Any abandoned property where any number of nuisance activities have occurred or exist.

Code enforcement officer means an individual appointed by the chief of police pursuant to Code § 2-503(b)(2) to enforce the provisions of this Article and City police officers authorized to enforce the Code as provided in § 2-503(b)(1).

Drug-related activity means any activity at a property which is an offense under Part 4 in Article 18 of C.R.S. Title 18, which offenses include, without limitation, the unlawful manufacture, cultivation, growth, production, delivery, sale, storage, possession, use, or giving away of any controlled substance and possession of drug paraphernalia.

Lessee means a person having a possessory interest in a property under an oral or written lease agreement.

Municipal court or c*ourt* means the municipal court of the City as established in Article VII, Section 1 of the Charter.

Municipal judge means any judge of the Fort Collins municipal court appointed by the City Council as provided in Article VII, Section 1 of the Charter.

Notice to abate means a written notice issued by a code enforcement officer as provided in § 20-113.

Nuisance activity means any of the following violations and nuisances occurring or existing on a property and committed by any person, including, without limitation, by an owner, lessee, agent, occupant, or trespasser:

1. Disorderly conduct - Code § 17-124.
2. Social host and underage use or possession of alcohol or marijuana - Code § 17-168.
3. Unreasonable noise - Code § 17-129.
4. Nuisance gatherings - Code §§ 17-131 and 17-132.
5. Camping on private property - Code § 17-182.
6. Violations of the 2021 International Fire Code – Code §§ 9-1 and 9-2.
7. Marijuana cultivation - Code § 12-142.
8. Dwelling unit occupancy limits - § 3.8.16 of the Fort Collins Land Use Code.
9. Animal violations - Divisions 4 and 5 of Code Chapter 4.
10. Hazardous waste disposal - Code § 12-21.
11. Hemp violations - Code §§ 12-222 and 12-23.
12. Abandoned refrigerators and similar items - Code § 17-81.
13. Discharging weapons - Code § 17-101.
14. Throwing of missiles - Code § 17-102.
15. Bodily waste - Code § 17-103.

16. Disturbing the peace - Code § 17-121.
17. Harassment - Code § 17-126.
18. Open container - Code § 17-141.
19. Public nudity - Code § 17-142.
20. Inhaling toxic vapors - City Code § 17-162.
21. Underage possession or use of alcohol - Code § 17-167.
22. Use and possession of marijuana - City Code § 17-191.
23. Use of alcohol for cannabinoid extraction from marijuana - Code § 17-194.
24. Air pollution nuisances - City Code § 20-1.
25. Noise violations - Article II of Code Chapter 20.
26. Exterior property maintenance nuisances - Article III of Code Chapter 20.
27. Weeds, unmowed grasses, refuse, rubbish, outdoor furniture, and outdoor storage nuisances - Article IV of Code Chapter 20.
28. Inoperable motor vehicle violations - Division 2 in Article VI of Code Chapter 20.
29. Parking and vehicle storage nuisances - Article VIII of Code Chapter 20.
30. Care and protection of trees, shrubs, and other vegetation - Division 3 in Article II of Code Chapter 27.
31. Assault - Code § 17-21.
32. Criminal mischief - Code § 17-39.
33. Littering - Code § 17-41.
34. Interference with public officers - Code § 17-63
35. Resisting arrest - Code § 17-64.
36. Theft – Code § 17-36.

38. Activities on the property causing the obstruction of adjacent highways, streets, sidewalks, or any other public place for the passage of individuals or vehicles so as to violate § 17-128 or §§ 1202, 1203, or 1204 of the Fort Collins Traffic Code as adopted in § 28-16.
39. Violations of Open Fire and Burning Restrictions – Article II of Code Chapter 9.
40. Violations of the 2021 International Building Code – Code §§ 5-26(a) and 5-27.
41. Violations of the 2021 International Residential Code – Code §§ 5-26(c) and 5-30.
42. Violations of the 2021 International Property Maintenance Code – Code §§ 5-46 and 5-47.
43. Violations of the Rental Housing Standards – Article VI, Division 1 of Code Chapter 5.
44. Criminal offenses against persons - Article 3 of Title 18 of the Colorado Revised Statutes (C.R.S.), except not including sexual assault defined in C.R.S. § 18-3-402 and stalking defined in C.R.S. § 18-3-602.
45. Crimes of arson - Part 1 of Article 4 in C.R.S. Title 18.
46. Crimes of robbery - Part 3 of Article 4 in C.R.S. Title 18.
47. Theft - C.R.S. § 18-4-401.

49. Crimes against children - Part 4 of Article 6 in C.R.S. Title 18.
50. Harboring a minor - C.R.S. § 18-6-601.
51. Contributing to the delinquency of a minor - C.R.S. § 18-6-701.
52. Crimes related to prostitution - Part 2 of Article 7 in C.R.S. Title 18.

53. Crime of public indecency - C.R.S. § 18-7-301.
54. Crime of indecent exposure - C.R.S. § 18-7-302.
55. Crimes related to child prostitution - Part 4 of Article 7 in C.R.S. Title 18.
56. Resisting arrest - C.R.S. § 18-8-103.
57. Obstructing a police officer, firefighter, etc. - C.R.S. § 18-8-104.
58. Disorderly conduct - C.R.S. § 18-9-106.
59. Harassment - C.R.S. § 18-9-111.
60. Cruelty to animals - C.R.S. § 18-9-202.
61. Unlawful ownership of dangerous dog - C.R.S. § 18-9-204.5.
62. Crimes related to firearms and weapons - Part 1 of Article 12 in C.R.S. Title 18.
63. Unlawful discarding or abandonment of iceboxes, motor vehicle, and similar items - C.R.S. § 18-13-106.
64. Hazardous waste violations - C.R.S. § 18-13-112.
65. Providing tobacco products to underage persons - C.R.S. § 18-13-121.
66. Underage possession and use of alcohol and marijuana - C.R.S. § 18-13-122.
67. Crimes related to controlled substances, marijuana, and other substances - Part 4 of Article 18 in C.R.S. Title 18.
68. Crimes related to burglary and related offenses – Part 2 of Article 4 in C.R.S. Title 18.

Occupant means a person occupying, residing in, or using a property with the consent of the owner or lessee, or of their agent, as applicable, which shall include, without limitation, *invitees*, *licensees*, and *social guests* as these words and term are defined in the Colorado Premises Liability Act.

Owner means a person having a fee title ownership interest in a property.

Person means any individual, corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership, limited partnership, limited liability company, and body politic and corporate, and all other groups and combinations.

Property means a contiguous parcel, tract, lot, or other area of land established or described by plat, subdivision, or metes and bounds description in common ownership which is permitted by law to be used, occupied, or designed to be occupied by one (1) or more buildings or uses. *Property* also means any building, or individual residential unit within a building, located on an any such area of land, that is in common ownership, but shall not include such land, buildings, and residential units owned by the Board of Governors of the Colorado State University System or utilized by Colorado State University for the housing of students or faculty or for other educational purposes.

Public nuisance or *nuisance* means any repeated or continuing nuisance activity, or combination of nuisance activities, occurring or existing on a property that creates an unreasonable risk of harm or is injurious to the public health, safety, or welfare, to include, without limitation, a nuisance activity, or combination of nuisance activities, that unreasonably injures, damages, annoys, inconveniences, or disturbs the peace of members of the public of normal sensibility with respect to their comfort, health, repose, or safety, or with respect to the free use and comfortable enjoyment of their property or of sidewalks, streets, or other public spaces near and around the offending

property.

Relative means an individual related by consanguinity within the third degree as determined by common law, a spouse, or an individual related to a spouse within the third degree as so determined and includes an individual in a step or adoptive relationship within the third degree.

Residential unit means any building or portion of a building designed, occupied, or intended for occupancy as separate quarters for the exclusive use of one or more individuals for living, sleeping, cooking, and sanitary purposes.

Trespasser means a person who enters or remains on the property of another person without that other person's consent.

Sec. 20-112. Entry of property and abatement of public nuisance.

(a) A code enforcement officer with probable cause to believe a public nuisance exists on a property may enter onto it without a warrant to inspect and abate any existing public nuisance and prevent the nuisance from recurring provided the same may be accomplished without entering a building on the property, entering the curtilage of a residential building on the property, or entering an area of the property enclosed by a privacy fence or similar enclosure. If the suspected public nuisance is within a building, the curtilage of a residential building, or enclosed by a privacy fence or similar enclosure, a code enforcement officer may enter such areas only with the consent of the owner, lessee, agent, or occupant, as applicable, or after obtaining a warrant as provided in subsection (c) of this Section.

(b) If entry is refused by the owner, lessee, agent, or occupant, as applicable, or they cannot be located after a reasonable effort, the code enforcement officer shall either personally serve the owner, lessee, agent, or occupant, as applicable, if they are located or, if not located, post on the property in a conspicuous location a written notice of intention to inspect not sooner than twenty-four (24) hours after the time specified in such notice. The notice shall state that the owner, lessee, agent, or occupant, as applicable, has the right to refuse entry, and if such entry is refused, inspection may be made only upon issuance of a search warrant by a municipal judge, or by a judge of any other court having jurisdiction.

(c) After the expiration of the twenty-four-hour period from the serving or posting of the notice of intent to inspect, the code enforcement officer may appear before a municipal judge or a judge of any other court having jurisdiction and, upon a showing of probable cause by written affidavit, obtain a search warrant entitling the code enforcement officer to enter the building, curtilage area, or fenced area, as applicable, to inspect the property, abate any nuisance, and prevent the nuisance occurring again. Upon presentation of the search warrant and proper credentials to any persons in possession of the property, or possession of the warrant in the case of an unoccupied property, the code enforcement officer may enter the building, the curtilage area, or fenced area, as applicable, and may use such reasonable force as may be necessary to gain entry to inspect the property, abate any nuisance, and prevent the nuisance occurring again.

(d) It is unlawful for any owner, lessee, agent, or occupant of the building or on the property to deny entry to a code enforcement officer or to resist reasonable force used by such officer acting pursuant to a search warrant issued pursuant to this Section.

(e) Whenever a public nuisance exists on a property that constitutes an emergency immediately threatening the life or safety of any person or other exigent circumstance exists, a code enforcement officer may enter any building on the property or any other portion of the property without a search warrant as reasonably necessary to abate the public nuisance constituting the emergency and prevent it from occurring again, and the code enforcement officer may use such reasonable force as is necessary to enter the building or onto the property to do so.

Sec. 20-113. Notice to abate.

(a) Upon discovering a public nuisance, a code enforcement officer may issue and serve a notice to abate on the owner or lessee, as applicable, or their agent, directing them to remove and abate the nuisance from the property within the time specified in the notice as follows:

(1) Within twenty-four (24) hours of the issuance of the notice if the nuisance poses an imminent and substantial risk of damaging other property (including personal property of any other person), injuring any individual, or threatening the public health or safety; or

(2) Within seven (7) days for all other public nuisances, or such longer period of time as the code enforcement officer determines is appropriate if, based on the facts and circumstances, the nuisance could not reasonably be abated within seven (7) days.

(b) If the owner, lessee, or agent, as applicable, fails to abate the nuisance within the time stated in the notice to abate, the code enforcement officer may remove or abate the nuisance from the property without delay as provided in § 20-112 or take such other action or actions as are authorized in this Article.

(c) Except as required for issuing a citation for a misdemeanor offense under § 20-125 and a civil infraction under § 20-130, a code enforcement officer and the City may take enforcement action to abate a public nuisance as authorized in this Article and any other provisions of this Code without first serving or posting a notice to abate.

(d) The code enforcement officer may serve the notice to abate by any of the following methods:

(1) Personal service of the notice to the owner, lessee, or agent, as applicable;

(2) Mail a copy of the notice by first class mail to the last known address of the owner as reflected in the records of the Larimer County Treasurer;

(3) Mail a copy of the notice by first class mail to the owner, lessee, or agent at their last known address(es) within the City's records or as found in other publicly available records; or

(4) Post a copy of the notice in a conspicuous place at the entrance of the property or entrance of any buildings on the property.

(e) The notice to abate shall include:

(1) A description of the public nuisance;

(2) The date by which the nuisance must be abated;

(3) A statement that if the nuisance is not abated within the time specified in the notice, the City may take any enforcement action authorized in this Article;

(4) A statement that, if the City abates the nuisance at its cost, it will be entitled to recover its actual internal and external costs plus interest as provided in § 20-118; and

(5) A statement that, if the City's cost of abatement is not paid, a lien shall attach to the property as provided in § 20-118 until such cost and accrued interest is paid in full.

Sec. 20-114. Remedies under other laws unaffected.

Nothing in this Article shall be construed as limiting or forbidding the City or any other person from pursuing any other remedies available at law or in equity concerning a public nuisance on a property.

Sec. 20-115. Limitation of actions.

(a) Actions under this Article concerning a public nuisance shall be commenced no later than one (1) year after: (i) the public nuisance or the last in a series of acts or omissions, or combination of both, constituting the public nuisance occurs, or (ii) the notice to abate is served or posted as provided in § 20-113, whichever is later.

(b) Actions under this Article concerning a chronic nuisance property shall be commenced no later than one (1) year after: (i) the last nuisance activity occurs that causes the property to be a chronic nuisance property, or (ii) the notice of chronic nuisance property is served as provided in § 20-135, whichever is later.

(c) These limitations shall not be construed to limit the introduction of evidence of acts or omissions that occurred more than one (1) year before such limitation period for the purpose of establishing the existence of a public nuisance, existence of a chronic nuisance property, when relevant to show a pattern of conduct, or for any other purpose.

Sec. 20-116. Effect of property conveyance.

When fee title to a property is conveyed from one (1) person to another or a property is leased or subleased from one (1) person to another, any nuisance activity that occurred or is existing on the property at the time of the conveyance, lease, or sublease which could be used under this Article

to prove that a public nuisance exists regarding such property or that the property is a chronic nuisance property, shall not be so used unless a reason for the conveyance, lease, or sublease was to avoid the property being subject to an enforcement action under this Article. It shall be a rebuttable presumption that a reason for the conveyance, lease, or sublease was to avoid the property being the subject of an enforcement action under this Article if: (1) the property was conveyed, leased, or subleased for less than fair market value; (2) the property was conveyed, leased, or subleased to an entity or entities controlled directly or indirectly by the person conveying, leasing, or subleasing the property; or (3) the property was conveyed, leased, or subleased to a relative(s) of the person making the conveyance, lease, or sublease.

Sec. 20-117. Municipal court jurisdiction.

Pursuant to Article XX, Section 6, and Article VI, Section 1 of the Colorado Constitution, and Article VII, Section 1 of the Charter, the municipal court is hereby granted the jurisdiction, duties and powers to hear and decide all causes arising under this Article, and to provide the remedies specified in this Article and in any other applicable provisions of the Code.

Sec. 20-118. Assessment, collection, and lien for abatement costs.

(a) If the City acts under § 20-112, an abatement agreement, or Division 5 of this Article to abate a public nuisance, chronic nuisance property, or any nuisance activity on a property, the owner of the property shall be liable to the City for the City's total internal and external costs incurred in the abatement. The City's internal costs shall be set and assessed under a written schedule of fees approved by the City Manager, which fees shall be based on a reasonable estimate of the City's direct and indirect internal costs to abate a nuisance, as amended from time to time. External costs shall include all amounts the City paid a vendor or contractor to assist in the abatement.

(b) After the abatement is completed, the City shall send the owner of the property an invoice itemizing and totaling the City's internal and external costs for the abatement. The invoice shall be mailed by first class mail addressed to the owner at the address of the property abated and to the last known address of the owner as reflected in the records of the Larimer County Treasurer. The invoice shall also be mailed by first class mail to any known agent of the owner at their last known address(es) within the City's records or as found in other publicly available records. The total costs so invoiced shall be paid to the City by the owner or their agent within forty-five (45) days of the date of the invoice. If not paid when due, the total assessed cost shall accrue interest at the rate of eight percent (8%) compounded annually.

(c) The City's assessed total cost of abatement, as stated in the invoice sent under this Section, plus the interest accruing thereon, shall be deemed a perpetual lien imposed upon the property from the date such assessed cost became due until paid and shall have priority over all other liens, except general taxes and prior special assessment liens. The Financial Officer, or their designee, is authorized to thereafter certify to the Larimer County Treasurer the list of delinquent assessments so billed, giving the name of the owner as it appears of record, the number of the lot and block and the amount of the assessment plus interest accrued to that date. The certification shall be the same in substance and form as required for the certification of other taxes. The

County Treasurer, upon receipt of such certified list, is hereby authorized to place it upon the tax list for the current year and to collect the assessment and interest in the same manner as general property taxes are collected together with any charges as may by law be made by the County Treasurer and all laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for unpaid taxes and the redemption thereof, shall apply to and have full force and effect for the collection of all such assessments and interest.

(d) If the offending property is not subject to taxation or for any other reason, the City may elect alternative means to collect the amounts due pursuant to this Article, including the commencement of a judicial action at law or in equity, to include, without limitation, commencement of a civil action in Larimer County District Court to judicially foreclose the lien and, after judgment, pursue such remedies as are provided by law.

Sec. 20-119. Presumption and owner responsibility.

Any person who has possession or control of a property as an owner, lessee, agent, or occupant where any nuisance activity exists or has occurred shall be presumed under this Article to be the person causing or allowing the nuisance activity unless the circumstances and evidence clearly indicate otherwise. Notwithstanding this presumption and any other provision of this Article, nothing herein shall be construed to release the owner of a property on which there is a public nuisance or that has become a chronic nuisance property from the legal obligations and responsibilities they have under this Article and any other laws to prevent their property from becoming a public nuisance or chronic nuisance property and to abate any nuisance activity occurring or existing on their property.

Sec. 20-120. Strict Liability.

All misdemeanor offenses under this Article and the civil infraction under § 20-130 shall be strict liability offenses requiring no culpable mental state of any type or degree.

Sec. 20-121. Proof of nuisance activities.

In any criminal proceeding under this Article, the City shall have the burden of proving beyond a reasonable doubt that any alleged nuisance activity occurred on the property, including proving all the elements of the offense constituting the nuisance activity except as hereafter provided. In any civil proceeding under this Article, the City shall have the burden of proving by a preponderance of the evidence that any alleged nuisance activity occurred on the property, including proving all the elements of the offense constituting the nuisance activity except as hereafter provided. However, the City shall not be required in either case to prove that a person was cited, held liable for, or convicted in municipal or any state court for the civil or criminal charge underlying that nuisance activity. If, however, a person is held liable for or convicted of the civil or criminal charge underlying the alleged nuisance activity and such decision is final, that decision shall be deemed by the municipal court as conclusive evidence the nuisance activity occurred and the City need only prove the nuisance activity occurred on the property.

Sec. 20-122. Mitigating factor.

If the owner, lessee, agent, or occupant who is a party-defendant in an action under this Article was the victim of or person harmed by the nuisance activity or activities that form the basis for the public nuisance on the property or for the property becoming a chronic nuisance property, the court may take this fact into consideration as a mitigating factor in determining such party's liability or guilt in such action, but only if the court also finds that: (i) the party or someone acting on their behalf promptly reported the nuisance activity or activities to the proper law enforcement agency; and (ii) at the time the activity or activities occurred, the party, or owner or lessee of the property, had reasonably effective means in place to prevent such activity or activities from occurring on the property or to manage them if prevention is not reasonably practicable. These means may include, without limitation, security cameras, security services, fencing, on-site personnel, and any other services, equipment, or facilities that have as their function to prevent, in whole or part, nuisance activities from occurring or existing on the property.

Reserved Sec. 20-123 through Sec. 20-124

Division 2. Criminal Action

Sec. 20-125. Misdemeanor Violation.

(a) It shall be a violation of this Article and a misdemeanor offense subject to the penalties of § 1-15 of this Code for any person to:

(1) Fail to remove and abate the public nuisance from the property within the time specified in the notice to abate after being served with the notice to abate as provided in § 20-113; or

(2) Interfere with or prevent, or attempt to interfere with or prevent, a code enforcement officer, other City employee, or City contractor from abating any public nuisance as authorized under this Article.

(b) Each and every day during which any public nuisance continues to exist on a property after the time period for abatement as stated in the notice to abate, shall be deemed a separate offense and prosecutable and punishable as a separate offense.

Reserved Sec. 20-126 through Sec. 20-129

Division 3. Civil Infraction

Sec. 20-130. Penalty assessment.

(a) In lieu of issuing a citation for a misdemeanor violation under § 20-125, a code enforcement officer may issue a civil penalty assessment notice for a civil infraction to any person for failing

to abate the public nuisance from the property within the time specified in the notice to abate after being served with the notice to abate as provided in § 20-113.

(b) The civil penalty assessment notice shall be a summons and complaint containing identification of the person cited, description of the public nuisance to be abated, and the applicable civil penalty assessment as set forth below in subsection (f) below, a requirement that the person pay the assessment or appear municipal court to answer the charge as set forth in the summons and complaint and a waiver of the right to a trial on the offense specified on the summons and complaint.

(c) If the person issued a civil penalty assessment notice chooses to acknowledge their liability, they may pay the specified assessment by mail or in person at the municipal court within the time specified in the notice. If they choose not to acknowledge their liability, they may appear as required in the notice. Upon trial, if the person is found liable, the civil penalty assessment imposed shall not be less than the amount set forth in the civil penalty assessment notice but not more than three thousand dollars ($3,000), as determined by the court, and court costs may be assessed in addition to the penalty assessment.

(d) Civil infractions under this Section shall be enforced and tried in municipal court in accordance with the Rules for Civil Infractions in Article V of Code Chapter 19.

(e) Each and every day during which any public nuisance continues to exist on a property after the time period for abatement as stated in the notice to abate shall be deemed a separate civil infraction and prosecutable and punishable as a separate infraction for a penalty assessment under this Section.

(f) The code enforcement officer shall designate in the penalty assessment notice the amount of the civil penalty assessment according to the following schedule:

(1) For the first infraction at a property, a penalty assessment of two hundred and fifty dollars ($250);

(2) For a second infraction at a property within a sixty (60) day period, a penalty assessment of five hundred dollar ($500);

(3) For a third infraction at a property within a one hundred and twenty (120) day period, a penalty assessment of one thousand dollars ($1,000); and

(4) For a fourth and any subsequent infraction at a property within a one (1) year period, a penalty assessment of two thousand dollars ($2,000) for each infraction.

Reserved Sec. 20-131 through 20-134

Division 4. Chronic Nuisance Property

Sec. 20-135. Notices for chronic nuisance property.

(a) Upon discovery that a property will become a chronic nuisance property if one more nuisance activity occurs on the property within the requisite time period, a code enforcement officer may issue and serve a written warning notice in the same manner provided for a notice to abate in § 20-113(d). Issuance of this warning notice shall not be a prerequisite to any proceedings under this Division 4.

(b) Upon discovery that a property has become a chronic nuisance property, a code enforcement officer shall issue and serve a notice of chronic nuisance property as provided in subsection (d) of this Section.

(c) The notice of chronic nuisance property is a lawful order. Each directive in it is a separate lawful order, and failure to obey any directive is subject to the penalties set forth in § 20-137.

(d) The notice of chronic nuisance property shall be deemed properly served if personally served on the owner of the property or sent by first class mail to the owner at the owner's address as stated in the records of the Larimer County Treasurer. If the notice is returned as undeliverable, the notice shall be deemed properly served if it is thereafter posted in a conspicuous place on the property. The notice shall contain the following information:

(1) the street address or a legal description sufficient for identification of the property;

(2) a factual description of the nuisance activities that have occurred on the property, including the dates of the nuisance activities;

(3) a statement that the property owner must respond to the notice within ten (10) days of the date of the owner's receipt of the notice or date of the posting, whichever is later, with a written plan to abate the nuisance activities;

(4) a statement that the owner's requirement to provide a written plan to abate the nuisance is a lawful order, and that failure to provide a written plan and enter into an abatement agreement as described below in § 20-136 could subject the owner to criminal and civil penalties as provided in § 20-137;

(5) a warning that, if the owner does not respond, as required, or if the nuisance activity is not voluntarily abated to the satisfaction of the code enforcement officer, the City may file a civil action to abate the property as a chronic nuisance property under the provisions in Division 4 of this Article; and

(6) a statement that the cost of future enforcement at the property as a result of nuisance activities shall be billed to the property owner and could become a lien against the property if not paid as provided in § 20-118.

Sec. 20-136. Agreement to abate chronic nuisance property.

(a) An owner issued a notice of chronic nuisance property pursuant to § 20-135 shall, within ten (10) days of such receipt or date of the posting, whichever is later, contact the code enforcement officer who issued the notice or other contact individual designated in the notice and enter into an abatement agreement with the City to eliminate the conditions, behaviors, or activities which constitute the nuisance activity at the property.

(b) If the owner does not timely respond to the notice under subsection (a) of this Section, or the owner does timely respond but the City and owner are unable to agree to an abatement agreement within thirty (30) days of the date of the notice, the City may proceed to abate the nuisance activities using any of the processes and remedies provided for in this Article or to cite the owner for a misdemeanor violation under § 20-137.

(c) If the owner fails to comply with any of the terms and conditions of the written abatement agreement entered into with the City under this Section, the City may file a civil action in municipal court or Larimer County District Court to enforce the abatement agreement in accordance with its terms and conditions.

Sec. 20-137. Misdemeanor Violation.

Any property owner who fails to obey any notice of chronic nuisance property issued by the code enforcement officer under § 20-135 to timely abate a chronic nuisance property or to timely enter into an abatement agreement as provided in § 20-136, is guilty of a misdemeanor and subject to the penalties set forth in § 1-15(a) of this Code. Each day's continuation of a violation or failure to comply is a separate offense.

Reserved Section 20-138 through Section 20-139.

Division 5. Civil Abatement Action

Sec. 20-140. Civil action to abate a public nuisance or chronic nuisance property.

If a public nuisance has not been abated within the time period stated in the notice to abate as provided under § 20-113, or if the property owner does not timely respond to the notice of chronic nuisance property as provided in § 20-136, or if the owner does timely respond but the City and owner are unable to agree to a written abatement agreement within thirty (30) days of the date of the notice as provide on § 20-135, the City may abate the public nuisance or chronic nuisance property using the following procedures and other provisions of this Division 5:

(a) The city attorney shall initiate the civil action in municipal court to have the public nuisance or chronic nuisance property declared as such by the court and for an order enjoining the public nuisance or chronic nuisance property and authorizing its restraint, removal, termination, or abatement.

(b) The action shall be commenced by filing a verified complaint, which may be accompanied by a motion for a temporary abatement order. The action shall be conducted under and governed by the Colorado Rules of Civil Procedure as provided in § 19-3(b) except as otherwise provided in this Article. The burden shall be upon the City to prove the existence of the public nuisance or chronic nuisance property by a preponderance of the evidence and the party-defendant(s) shall have the burden to establish any affirmative defense by a preponderance of the evidence. The rules for discovery and disclosure in this civil proceeding shall be those in Rules 316, 326, 331, and 332 of the Colorado Rules of County Court Civil Procedure and not the rules for discovery and disclosure in the Colorado Rules of Civil Procedure. In addition, no party-defendant may file any counterclaim, cross claim, third-party claim, or set-off of any kind in any action under this Division 5.

(c) The party-defendant(s) to an action commenced under this Section and the person(s) liable for the remedies in this Section may include:

(1) The property itself;

(2) Any person owning or claiming any legal or equitable interest in the property;

(3) All lessees and occupants of the property;

(4) All managers and agents for any person claiming a legal or equitable interest in the property;

(5) Any person committing, conducting, promoting, facilitating, or aiding in the commission of the public nuisance or chronic nuisance property; and

(6) Any other person whose involvement may be useful to abate the public nuisance or chronic nuisance property, prevent it from recurring, or to carry into effect the municipal court's orders.

None of these parties shall be deemed necessary or indispensable parties in the action. Any person holding a legal or equitable interest in the property who has not been named as a party-defendant may intervene in the action as a party-defendant. No other person may intervene.

(d) The summons, complaint and, if applicable, the motion for temporary abatement, filed with municipal court under this Section may be served by a code enforcement officer.

(e) The civil action under this Division 5 shall be heard by the municipal court on all factual and legal issues without a jury.

Sec. 20-141. Abatement orders.

(a) *Issuance and effect of temporary and permanent abatement orders*. The issuance of temporary or permanent abatement orders under this Article shall be governed by the provisions of Rule 65 of the Colorado Rules of Civil Procedure, pertaining to temporary restraining orders,

preliminary injunctions and permanent injunctions, except to the extent otherwise provided in this Article, in which event the provisions of this Article shall control. Temporary abatement orders provided for in this Article shall go into effect immediately when served upon the property or party against whom they are directed. Permanent abatement orders shall go into effect as determined by the municipal court. No bond or other security shall be required of the City upon the issuance of any temporary abatement order or permanent abatement order.

(b) *Form and scope of abatement orders*. Every abatement order under this Article shall set forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe in reasonable detail the acts and conditions authorized, required or prohibited; shall be narrowly tailored to address the particular kinds of acts or omissions that form the basis of the public nuisance; and shall be binding upon the property, the parties to the action, their attorneys, agents and employees, and any other person named as a party-defendant in the public nuisance action and served with a copy of the order.

(c) *Substance of abatement orders*. Temporary and permanent abatement orders entered under this Article may include:

(1) Orders requiring any party-defendant to abate the public nuisance or chronic nuisance property;

(2) Orders authorizing code enforcement officers to take reasonable steps to abate the public nuisance or chronic nuisance property and prevent it from recurring, considering the nature and extent of acts and omissions causing the public nuisance;

(3) Orders requiring certain named individuals to stay away from the property at all or specific times;

(4) Orders reasonably necessary to access, maintain, or safeguard the property; and/or

(5) Orders reasonably necessary to abate the public nuisance or chronic nuisance property and/or preventing them from occurring or recurring; provided, however, that no such order shall require the seizure of, the forfeiture of title to, or the temporary or permanent closure of a property, or the appointment of a special receiver to protect, possess, maintain, or operate a property.

(d) *Temporary abatement orders*.

(1) The purpose of a temporary abatement order shall be to temporarily abate an alleged public nuisance or chronic nuisance property pending the final determination of a public nuisance or chronic nuisance property. A temporary abatement order may be issued by the municipal court pursuant to the provisions of this Section even if the effect of such order is to change, rather than preserve, the status quo.

(2) At any hearing on a motion for a temporary abatement order, the City shall have the burden of proving that there are reasonable grounds to believe that a public nuisance

occurred in or on the property or the property is a chronic nuisance property and, in the case of a temporary order granted without notice to the property owner, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage, or injury to the public interest or any other person or property.

(3) At any hearing on a motion for a temporary abatement order or a motion to vacate or modify a temporary abatement order, the municipal court shall temper the rules of evidence and admit hearsay evidence unless the court finds that such evidence is not reasonably reliable and trustworthy. The municipal court may also consider the facts alleged in the verified complaint.

(e) *Permanent abatement orders*.

(1) At the trial on the merits of a civil action commenced under this Division, the City shall have the burden of proving by a preponderance of the evidence that a public nuisance is occurring or existing on the property, or the property is a chronic nuisance property. The Colorado Rules of Evidence shall govern the introduction of evidence at all such trials.

(2) Where the existence of a public nuisance or chronic nuisance property is established in a civil action under this Division after a trial on the merits, the municipal court shall enter a permanent abatement order requiring the party-defendant(s) to abate the public nuisance or chronic nuisance property and take specific steps to prevent the same from occurring or recurring on the property or in using the property.

Sec. 20-142. Motion to vacate or modify temporary abatement orders.

(a) *General*. When a temporary abatement order against a property owner is in effect, such property owner may file a motion to vacate or modify said order. Any motion filed under this Subsection (a) shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing. The municipal court shall vacate the order if it finds by a preponderance of the evidence that there are no reasonable grounds to believe that a public nuisance was committed in or on the property or that the property is a public nuisance property. The court may modify the order if it finds by a preponderance of the evidence that such modification will not be detrimental to the public interest and is appropriate, considering the nature and extent of the alleged public nuisance or chronic nuisance property.

(b) *Continuance of hearing*. Except for good cause shown by any party, the Court shall not grant a continuance of any hearing set under this Section unless all the parties so stipulate.

(c) *Consolidation of hearing with other proceedings*. If all parties so stipulate, the municipal court may order the trial on the merits to be advanced and tried with the hearing on these motions.

Section 20-143. Civil Penalty.

(a) The municipal court may impose upon the property owner a civil penalty in the amount of not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000.00) per

day, payable to City, for each day the courts finds that a public nuisance continued to exist on the property after the time period for the required abatement as stated in the notice to abate provided under § 20-113 or for each day the court finds the property continued to exist as a chronic nuisance property after the property owner does not timely respond to the notice of chronic nuisance property as provide in § 20-136, or the owner does timely respond but the City and owner are unable to agree to a written abatement agreement within thirty (30) days of the date of the notice as provide on § 20-136.

(b) In establishing the amount of any civil penalty requested, the municipal court may consider, without limitation, any of the following factors:

(1) The action or inaction taken by the owner to mitigate or correct the nuisance activities at the property;

(2) Whether the nuisance activities at the property were repeated or continuous;

(3) The magnitude or gravity of the nuisance activities;

(4) The level of cooperation of the owner with the City;

(5) The cost incurred by the City in investigating and correcting, or attempting to correct, the public nuisance at the property or the chronic nuisance property;

(6) The disturbance of neighbors; and

(7) Whether the nuisance activities continued on the property after the City provided the notice to abate or the notice of chronic nuisance property under § 20-135.

Sec. 20-144. Civil judgment.

In any action under this Division in which a public nuisance or chronic nuisance property is established, in addition to the other remedies provided in this Division, the municipal court may impose a separate civil judgment on every party-defendant who committed, conducted, promoted, facilitated, permitted, failed to prevent or otherwise let happen any public nuisance in or on the property or for the property to become a chronic nuisance property. This civil judgment shall be for any civil penalties awarded to the City under § 20-143 and to reimburse the City for the City's internal and external costs, as set in the City Manager's approved schedule of fees as provided for in § 20-118(a), the City has incurred and will incur in pursuing the remedies under this Article against the property, which shall include, without limitation, the City's reasonable attorney fees and costs.

Sec. 20-145. Misdemeanor violation and entry order.

(a) The remedies provided in this Division shall be civil and remedial in nature except that, if any person knowingly fails or refuses to abide by a temporary or permanent abatement order

issued by the municipal court under the provisions of this Division, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by the penalties provided in § 1-15 of this Code.

(b) In any action filed under the provisions of this Division, if any party-defendant fails, neglects, or refuses to comply with an order of the municipal court, the court may, upon the motion of the City, in addition to or in the alternative to the remedy of contempt and the possibility of criminal prosecution, permit the City to enter upon the property to abate the public nuisance or chronic nuisance property, take steps to prevent it from occurring again, and perform such other acts required of any party-defendant in the court's orders.

Sec. 20-146. Stipulated alternative remedies.

(a) The City and any party-defendant to an action under this Division may voluntarily stipulate to orders and remedies, temporary or permanent, that differ from those provided in this Division.

(b) The municipal court may accept such stipulations for alternative remedies and may make such stipulations an order of the court, enforceable as an order of the court.

Section 3. That Section 19-3(b) of the City Code is hereby amended to read as follows:

Sec. 19-3. Rules of procedure.

. . . .

(b) The Colorado Rules of Civil Procedure, as amended, shall govern the procedures in Municipal Court in all civil actions for a cause arising under the Charter, Code and City ordinances and as needed for the Municipal Court to determine whether it has jurisdiction over a cause in a civil action, but not for actions for violations, offenses and infractions of the Charter, Code and City ordinances which are to be governed by the procedures established in Subsection (a) of this Section. In addition, the rules for discovery and disclosure in civil abatement actions under Division 5 in Article IX of Code Chapter 20 shall be those in Rules 316, 326, 331, and 332 of the Colorado Rules of County Court Civil Procedure and not the rules for discovery and disclosure in the Colorado Rules of Civil Procedure. References to the district court in the Colorado Rules of Civil Procedure and references to the county court in the Colorado Rules of County Court Civil Procedure shall be deemed to refer to the Municipal Court.

(c) The Municipal Court shall liberally construe, administer and apply these adopted rules of procedure as applicable in each civil action to secure the just, speedy and inexpensive determination of that civil action. In these civil actions, the Municipal Court shall be vested with the full authority to provide civil remedies, including, without limitation, equitable, injunctive and declaratory relief and to award costs and attorney fees to the full extent permitted by law. It shall also have the power in those actions to compel the attendance of witnesses, to punish for contempt of court and to enforce any award of equitable, declaratory or injunctive relief through its contempt power in accordance with

the applicable provisions of the Colorado Rules of Civil Procedure, as amended. This Section is not intended to create any new causes of action in the Municipal Court, nor to provide procedures or relief beyond those contemplated by Rule 106(a)(4) of the Colorado Rules of Civil Procedure to actions undertaken strictly within the sphere of matters that are of the City's local or municipal concern.

11-7-22

Public Nuisance Ordinance

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City of Fort Collins

What questions does Council have regarding the draft Public Nuisance Ordinance?

Neighborhood Livability & Social Health

- 1.5 Enhance the quality of life in neighborhoods, empower neighbors to solve problems and foster respectful relations.
- Proactive, innovative, and effective code compliance processes are important aspects of attractive neighborhoods.

Safe Community

- 5.7 Reduce incidents of, and impacts from, disruptive and unwanted behaviors with creative approaches that balance compassion and consequences.

- SC 1.1 Provide and expand opportunities for neighborhood safety and involvement by fostering good neighborhood relations, building a sense of community pride, and involvement, promoting safe and attractive neighborhoods, and encouraging compliance with City codes and regulations.
- SC 2.1 Provide high-quality, cost-effective Police Services with an increased focus on neighborhood policing and particular attention to criminal activity, quality-of-life issues, and visible signs of disorder.

Purpose:

To remedy chronic problems at properties where City Code violations occur that annoy and disturb others.
To hold property owners accountable for the use of their properties.

Definition of “Public Nuisance”:

Three or more separate City Code violations at the same property within 12 months or 5 or more within 24 months. Written notice must have been sent to the property owner and tenants within 30 days of each violation, except the last one. The last violation must have occurred at least 45 days after the last notice. Each complaint about a separate violation must result in the issuance of a municipal court citation.

Separate violation(s) shall mean any act or omission that constitutes a violation of the Code if the act or omission occurs under any of the following circumstances:

(1) the conduct of the persons committing the violation was such as to annoy or disturb the peace of the residents in the vicinity of the parcel or of passersby on the public streets, sidewalks and rights-of-way in the vicinity of the parcel; or

(2) the violation constitutes a public nuisance under any section of this Chapter; or

(3) the condition of the parcel upon which the violation occurred was, at the time of the violation, injurious o harmful to the health, safety or welfare of the occupants, neighbors thereof or citizens of the City.

Current Community Issues have Changed.

Jurisdiction	Definition of chronic nuisance property
Parker, CO	3 or more occasions where nuisance activity is observed in 60 days or 7 or more in 12 months
Cincinnati, OH	3 or more nuisance activities occurred at the premises in a 30-day period
Kansas City, MO	3 or more police responses to nuisance activity in 30 days, 7 or more in 180 days
Spokane, WA	3 or more nuisance activities observed on a property in 60 days, 7 or more in 12 months
Seattle, WA	3 or more nuisance activities exist or have occurred on a property in 60 days, 7 or more in 12 months
Portland, OR	3 or more nuisance activities exist or have occurred on a property in 30 days
Elgin, IL	3 or more instances of any one or any combination of nuisance activity in 12 months based upon 3 separate factual events that have been independently investigated
Springfield, IL	3 or more separate inspections or incidents w/in 24 months that have been the source of 3 or more violations as determined by an admin hearing officer; OR 2 or more of certain criminal activities in a 60-day period or 3 or more in a 365-day period
Milwaukee, WI	3 or more responses from the police department for "nuisance activities" in 30 days

Public Nuisance, Chronic Nuisance, and Nuisance Activity

The proposed PNO regulates two types of nuisances: (i) a “public nuisance”; and (ii) a “chronic nuisance property”. The existence of each of them depends on the occurrence or existence of multiple or continuing “nuisance activities” on a property.

A “nuisance activity” is defined in the PNO to include 66 categories of various criminal and civil violations happening on the property that individually or in combination result in either a public nuisance or chronic nuisance property. These nuisance activities include:

- civil infractions under the City Code, such as tall weeds and grass, rubbish, and inoperable motor vehicles; animal control issues
- minor misdemeanor violations under the City Code, such as unreasonable noise, bodily waste, and nuisance gatherings;
- more serious misdemeanor violations under the City Code, such as resisting arrest, assault, disorderly conduct, and building and fire code violations; and
- misdemeanors and felonies under State law, such as criminal mischief, assault, harassment, arson, firearms offenses, and drug-related offenses.

A “public nuisance” exists when repeated nuisance activities (meaning more than one) have occurred on the property or a continuing nuisance activity exists on it causing an unreasonable risk of harm or injury to the public health, safety, or welfare.

This would include circumstances where the nuisance activities are unreasonably injuring, damaging, annoying, inconveniencing, or disturbing the peace of members of the public with respect to their:

(i) comfort, health, repose, or safety; or

(ii) free use and comfortable enjoyment of their property and of sidewalks, streets, or other public spaces near the offending property.

1. A property where three (3) or more nuisance activities have occurred within a ninety (90) day period or seven (7) or more nuisance activities have occurred within a one (1) year period, *

2. A property that is more than one (1) residential unit that are all under common ownership where six (6) or more nuisance activities have occurred within a ninety (90) period or ten (10) or more nuisance activities have occurred within a one (1) year period, *

3. A property where two (2) or more nuisance activities involving drug-related activity have occurred within a thirty (30) day period,* or

4. An abandoned property where any number of nuisance activities have occurred or exist.*

*each activity happening on separate days

Enforcement tools

The proposed PNO would allow for the City to:

- Written notice to the property owner of the existence of the public nuisance or chronic nuisance property to allow them the opportunity to abate the nuisance activities
- If unsuccessful, a citation is issued to the noticed persons.
    - $250 for the first offense
    - $500 for a second offense within 60 days
    - $1,000 for a third offense within 120 days
    - $2,000 for fourth and subsequent offenses within a year
- If unsuccessful, the next step could potentially be issuing a citation to the property owner for a misdemeanor offense which the maximum allowable penalty is not to exceed $3,000 or 180 days in jail or both
- If unsuccessful, the City could file a civil abatement action in Municipal Court against the property owner

What questions does Council have regarding the draft Public Nuisance Ordinance?

THANK YOU!

City of Fort Collins