

# Fort Collins City Council Work Session Agenda

Tuesday, June 6, 2023 (Immediately Following the 6:00 pm Regular Council Meeting)  
Council Information Center, 300 Laporte Ave, Fort Collins, CO 80521

## NOTICE:

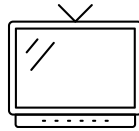
Work Sessions of the City Council are held on the 2nd and 4th Tuesdays of each month in the Colorado Room of the 222 Building. Meetings are conducted in a hybrid format, however there is no public participation permitted in a work session.

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](https://fcgov.com/fctv)

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



While work sessions do not include public comment, mail comments about any item on the agenda to [cityleaders@fcgov.com](mailto:cityleaders@fcgov.com)





# City Council Special Work Session Agenda

**June 6, 2023**

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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

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Channel 14 and 881 on Comcast

Carrie Daggett  
City Attorney

Kelly DiMartino  
City Manager

Anissa Hollingshead  
City Clerk

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## **CITY COUNCIL WORK SESSION** **(Immediately Following the 6:00 PM Regular Council Meeting)**

### **A) CALL MEETING TO ORDER**

### **B) ITEMS FOR DISCUSSION**

#### **1. Water Adequacy Determination Regulations.**

The purpose of this item is to discuss a draft Ordinance to amend the Fort Collins Land Use Code to include regulations for water adequacy determinations for new development and redevelopment. The draft regulations are divided into three different categories: one for established potable water supply entities, one for new potable water supply entities, and one for non-potable water supply entities. The goal is to comply with Colorado state statute (C.R.S. Section 29-20-301, et seq.) and to make sure development has the necessary water supply.

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

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

### **C) ANNOUNCEMENTS**

## **D) ADJOURNMENT**

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June 6, 2023

# WORK SESSION AGENDA

## ITEM SUMMARY

City Council

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### STAFF

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Jenny Axmacher, Principal Planner  
Clay Frickey, Interim Planning Manager  
Brad Yatabe, Legal  
Eric Potyondy, Legal

### SUBJECT FOR DISCUSSION

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**Water Adequacy Determination Regulations.**

### EXECUTIVE SUMMARY

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The purpose of this item is to discuss a draft Ordinance to amend the Fort Collins Land Use Code to include regulations for water adequacy determinations for new development and redevelopment. The draft regulations are divided into three different categories: one for established potable water supply entities, one for new potable water supply entities, and one for non-potable water supply entities. The goal is to comply with Colorado state statute (C.R.S. Section 29-20-301, et seq.) and to make sure development has the necessary water supply.

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

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

### GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

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1. Is the determination being made at the optimal time during the development review process?
2. Would Council like a high level review of the water resources of established potable water suppliers prior to allowing them to continue submitting will serve letters to determine adequacy?



3. Would Council like to require new, other privately-owned potable water supply entities to exclude or gain consent from an established potable water supplier, if the new entity is proposing to operate within their service area?

## BACKGROUND / DISCUSSION

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### Relevant Past Council Discussions

- Water Adequacy Code Update – July 12, 2022
  - Work Session Summary:  
<https://records.fcgov.com/CityCouncil/DocView.aspx?id=15514959&dbid=0&repo=FortCollins>
- Northeast Fort Collins Planning and Projects Overview - August 31, 2021
  - Work Session Summary:  
<https://records.fcgov.com/CityCouncil/DocView.aspx?id=15319767&dbid=0&repo=FortCollins>
- Montava Development: Overview of Proposed Potable Water Supply Relying on Groundwater - February 9, 2021
  - Work Session Summary:  
<https://records.fcgov.com/CityCouncil/DocView.aspx?id=13049288&dbid=0&repo=FortCollins>
- Approval of Montava PUD Overlay and Master Plan - February 18, 2020
  - Agenda Item Summary:  
<https://records.fcgov.com/CityCouncil/DocView.aspx?id=3487541&dbid=0&repo=FortCollins>
- Northeast Fort Collins Planning and Projects Overview - September 24, 2019
  - Work Session Summary:  
<https://records.fcgov.com/CityCouncil/DocView.aspx?id=3247255&dbid=0&repo=FortCollins>
- Rural Scenario Assessment and reconfirmation of the Mountain Vista subarea framework plan - June 9, 2015.
  - Work Session Summary:  
<https://records.fcgov.com/CityCouncil/DocView.aspx?id=3481555&dbid=0&repo=FortCollins>

### Background

Water is a crucial and constrained resource, and the City strives to ensure that development (which includes both new development and re-development) meets the community's vision and expectations for responsible resource management. City Plan includes policies to ensure water is used wisely and our community is prepared for a changing climate. The plan also supports managing water resources in a manner that enhances and protects long-term water quality, supply, and reliability for current and future residents.

The necessity for an updated water adequacy review program stems, in part, from the limited supply and high cost of water resources, which have resulted in developers pursuing more creative ways to provide potable and non-potable water to their proposed developments, particularly projects striving to provide affordable housing or the denser development patterns called for in City Plan. One development contemplating a more unique and potentially innovative approach to supplying water is the Montava Planned Unit Development (PUD), which proposes a privately-owned groundwater-based water supply for

both potable and non-potable water service. The developer believes this system will improve the overall resiliency of the water supply for the area while also reducing the cost.

Because the City does not currently have a formalized review process or criteria for “non-standard” water service models, including groundwater systems, new policy and code are needed to confirm that future residents are adequately served and, in a manner consistent with City policies. While the Montava PUD project has, to some degree, generated the immediate need for this type of review, staff believes a comprehensive program could have benefits for reviewing all pending and future developments moving forward, regardless of the water source.

### **Requirement for Water Adequacy Review**

This review process is being proposed to further effectuate a Colorado state statute (C.R.S. Section 29-20-301, et seq.), which states:

*A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which time such determination is made.*

For this regulation, the Colorado state statute defines some key terms, including the following:

*Adequate* means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Water supply entity* means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.

Currently, development within the City only occurs within the boundaries of existing City (Fort Collins Utilities) and special district potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District, and the adequacy determination is made through the issuance of a “will serve” letter from the established potable water supply entity. The City receives a will serve letter from the established potable water supply entity during the building permit process for the development. A will serve letter states that the entity has the infrastructure and capacity to provide water service to the proposed development project and commits to providing that service.

Pursuant to state statute, “will serve” letters meeting certain requirements may satisfy the water adequacy determination for future developments to be served by these established potable water supply entities, but staff will soon be faced with the Montava PUD proposal and other pending non-potable water supply proposals that are outside the bounds of the current system and need a more robust and transparent process to evaluate its more complex proposal. It is the responsibility of the City to ensure that future residents are well served by an adequate system.

### **Public Outreach**

This proposed Land Use Code change did not include specific public outreach meetings for the general public, however, information on the code update was provided on the website, including an educational video. A press release on the update was also issued.

The specific draft water adequacy regulations were released to the public in the April 14, 2023, work session packet on April 7, 2023, and emailed directly to all established potable water supply entities, known stakeholders, and interested parties on April 11, 2023. An updated draft was released on April 25, 2023, that incorporated changes based on feedback from the Planning and Zoning Commission work session, Water Commission meeting, stakeholder meetings and public feedback received between April 7, 2023, and April 24, 2023. This was the draft that the Planning and Zoning Commission recommendation was based on. The attached code draft incorporates further feedback from the aforementioned groups, including specific redlines received.

Staff met with representatives from the following groups to present the draft code updates as well to solicit feedback:

- West Fort Collins Water District
- East Larimer County Water District
- Fort Collins-Loveland Water District
- Hartford Homes/Bloom
- HF2M/Montava
- Polestar Gardens/Polestar Village

Staff also received a call from the Sunset Water District expressing they did not have concerns about the update based on their perceived lack of development in their district boundary which they state is entirely in an unincorporated area. Save the Poudre also stated they had no concerns about the proposed update.

In general, the stakeholder feedback included an appreciation to discuss the proposed code and a better understanding of the intent after the meetings. The main points of contentions expressed included:

- Requirement for new, other privately-owned potable water supply entities to petition out of the boundaries of existing potable water supply entities or seek permission from the existing potable water supply entity. There was both support and concern over this concept.
- The disparity between review criteria for established and new potable water supply entities.
- The perception that the City was trying to regulate special districts through the review of a water supply plan or letter establishing the district's resources.
- A desire for more cooperation and consistency between all water suppliers.
- Concerns about duplicative review processes, especially for non-potable systems.
- Concerns over review costs.
- Feedback that some metrics were vague.
- Feedback on the review timing proposed (FDP versus DCP) with a desire to complete the determination sooner.
- Feedback that there is a desire to be able to review new service for an entire development and then true up each phase at the time of final plan or BDR.
- Concerns on tight review timing for code update.

Written comments were received from many of the stakeholders outlined above and are included in the packet. Staff believes many of these concerns were addressed in the attached code draft.

### **Planning Commission Recommendation**

Staff met with the Water Commission on April 20, 2023, and the Planning and Zoning Commission on April 14, 2023, and April 26, 2023, for the public hearing on the proposed code update. During the Planning and

Zoning Commission hearing on April 26, 2023, the Commission unanimously adopted the recommendation below:

*The Planning and Zoning Commission recommend that City Council NOT ADOPT the proposed water adequacy determination code update in order to allow additional time to consider the impacts of the timing of the determination, and to allow staff to further study section 3.13.5C(5) to fully understand implications for both applicants and supplier, particularly for an applicant's ability to appeal the decision of a district.*

This decision is based upon the agenda materials, the information and materials presented during the work session and the public hearing, and the Commission discussion on this item.

Staff believes the concern about the timing of the determination could be alleviated with a better understanding of how the development review process already incorporates feedback from established potable water supply entities early on in the review process. Referrals are sent to entities for review and comment when applications are received within their service areas. This gives both the applicant and the established potable water supply entities ample opportunity to work together to address the water resources needed for the project so that once it becomes time for the City to make a determination, there should be confidence with both parties in gaining approval. Staff is also adding language to conceptual review letters reminding potential applicants to work with their water suppliers early on in the process.

As for the concerns about Section 3.13 5(C)(5) concerning the requirement for new, other privately-owned potable water supply entities to petition out of the boundaries of existing potable water supply entities or seek permission from the existing potable water supply entity, Staff was able to confirm that there is indeed an appeal process, if an established potable water supplier were to deny an applicant's petition to exclude from their service area. The decision is appealable to the Board of County Commissioners and then that decision is further appealable to District Court. Staff believes this clarification is what the Planning and Zoning Commission requested.

### **Code Update Timing**

As noted above, there were concerns about the limited review time for the update for outside parties. The timeline for the code update review process has been driven by a desire to have the code in place, or nearly in place, prior to or shortly after a June status conference for a related water court case. The City (along with other parties) previously requested a stay in this case to get this process in place. The stay was requested around the same time (May 2022) that the City had a request for proposals (RFP) out to obtain a consultant to complete this code update work. The RFP did not result in the City finding a consultant to complete this work and so the project fell back to staff to complete, which was not anticipated as part of staff's workplan. While staff completed the initial draft for the code update late last summer (after the July work session) into the fall, competing priorities and resource limitations caused the outreach and detailed drafting work to be delayed over the late fall and winter.

Based on feedback from the Judge in the water court case in early March 2023, priorities shifted to complete this work, and this was the schedule that made it possible to complete this task in that timeframe. While the timeline was compressed, staff were able to meet with all stakeholders who requested a meeting and discussed the code update with all established potable water supply entities within the City's GMA.

Staff is also committed to re-evaluating this code, with our stakeholders, as part of the Land Use Code Phase 2 update which will hopefully kick off sometime this fall.

### **Summary of Proposed Changes**

The proposed Land Use Code changes are attached and include an amendment to Article Three, adding Division 3.13, and adding nine new definitions to Article Five, Section 5.1.2 Definitions. A summary of the proposed changes include:

## 1. Article Three, Division 3.13 – Water Adequacy Determinations

The proposed new division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to C.R.S. Section 29-20-301, et seq.

The subsequent sections outline the applicability, application, and procedures and standards for the three different review types:

- Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District.
- Other potable water supply entities, such as new privately-owned water supplies or metro districts.
- Non-potable water supply entities, such as irrigation water supplied by ditch companies and managed by metro districts.

### Established Potable Water Supply Entities

For established potable water supply entities, the code provides options for compliance through review of water supply plans or letters from engineers detailing how the water supply system functions. Once an initial approval is completed, the process would move forward similarly to what the City does now with will serve letters.

### Other Potable Water Supply Entities

A more detailed process is proposed for other potable water supply entities and the City has identified the following characteristics for evaluation criteria:

- Water Quality
- Quantity of Water
- Dependability of Supply and Supplier
  - Supply Resiliency
  - System Redundancy
  - Maintenance and Outages
- Availability of Supply
- Financial Sustainability of Supplier Capitalization

In general, the standards compare the new proposed system to the existing municipal utility.

### Non-potable Water Supply Entities

The criterion for non-potable systems ensures the supply has enough quantity and quality to support the associated uses such as irrigation for landscape.

## 2. Article Five, Division 5.1.2 – Definitions

The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.

Those terms are:

- Adequate
- Established potable water supply entities
- Non-potable water
- Non-potable water supply
- Other potable water supply entities
- Potable water
- Water adequacy determination
- Water rights portfolio
- Water supply entity
- Water supply system

## CITY COUNCIL DECISION POINTS

Based on the feedback received from Planning and Zoning Commission and other stakeholders, staff suggest Council consider the following three decision points. In all cases, staff is recommending no changes to the proposed Code.

### **Decision Point 1 - Section 3.13.3 (A): Timing of Water Adequacy Determination**

This section outlines the timeline for when the water adequacy determination is made and aligns it with a milestone during the development review process.

- For established potable water supply entities, the process would occur at final plan or basic development review but can be deferred to building permit as it occurs now.
- For other potable water supply entities, the process would occur at final plan or basic development review too but could be deferred to development construction permit. If the other potable water supply entity was planning to serve a development with an overall development plan or that is part of a planned unit development overlay, the project could be reviewed in its entirety with the first phase of development, subject to the provisions outlined in Section 3.13.5 (A)(8).
- New non-potable water supply entities would also be reviewed at final plan or basic development review but could be deferred to development construction permit.

### **Alternatives**

- Move the determination timing for any or all the three entity types to earlier in the development review process such as at the project development plan.
  - Pros: Provide assurance that water supply issues are being addressed earlier in the development review process so that unrealistic projects don't waste resources.
  - Cons: Projects can change, potentially significantly, as they go through the development process and those impacts could change the amount of water the development ultimately needs to be successful. For example, a commercial space could change from a retail store to a restaurant or brew pub, all having different water supply requirements.



- Move the determination timing for any or all the three entity types to later in the development review process such as at building permit.
  - Pros: Gives Staff the most accurate and detailed information on the water supply requirements to make the determination.
  - Cons: Allows projects with unrealistic water supply proposals to move through the development review process to the point of having created detailed construction drawings and incurred those design expenses.

### Staff Analysis

Colorado state statute (C.R.S. Section 29-20-301, et seq.) states that a municipality can only make a water adequacy determination once unless the development is materially changed. Staff balanced the desire from development stakeholders to complete the determination earlier in the development review processes with concerns about duplicated efforts from other regulatory agencies as well as staff desire to make the determination with enough information on the proposed development to make an accurate assessment.

Development projects can evolve and change through the process and by delaying the determination until later in the process, staff believe it can be made with more certainty. This does not mean, however, that staff is encouraging applicants to leave water decisions on development to the end of the process. Staff reminds applicants to work with their water supply entity early, and often, in the development review process and is adding language to conceptual review comment letters to further this point.

### **Decision Point 2 - Section 3.13.4 (A) (1): City Council Information Only Review of Established Potable Water Supply Entity Water Supply Resource Information**

Subsections (a) and (b) both require documents from the established potable water supply entities regarding their water supplies to be provided to Council for information only.

### Alternatives

- Remove this requirement from both subsections (a) and (b).
  - Pros: Allows established potable water supply entities to continue submitting will serve letters, as they have previously done with minimal changes to the current process.
  - Cons: There is a missed opportunity for education for both parties on how these established potable water supply entities provide services within the City and how these services impact the community.
- Require a greater level of review for these documents such as a presentation before Council, or another City Board or Commission, during a meeting or work session.
  - Pros: Allows for greater dialogue and understanding on how water resources are provided to all parts of the Fort Collins community.
  - Cons: Established potable water supply entities would likely feel that this infringes on their quasi-governmental entity's rights to serve their established purpose and could create a misunderstanding that the City has some oversight over the districts, when the City does not.

### Staff Analysis

This would be a new, high-level review of supply resource information for established potable water supply entities to provide prior to being able to continue with the existing process of submitting a will serve letter at the time of building permit. This step in the process was included based on feedback received from Council during the July 12, 2022, work session that Council wanted additional information on the water supplies of established potable waters supply entities.

Feedback from established potable water supply entities indicated that they do not want Council to approve any documents related to their special district and would prefer to not complete any type of review.

**Decision Point 3 – Section 3.13.5(C)(5)(c): Require New Potable Water Supply Entities Within the Service Area of an Established Potable Water Supply Entity to Be Excluded from the Service Area or Receive Consent to Operate**

This provision would require that if a new potable water supply entity is proposing to locate within the service area of an established potable supply entity (such as service areas of Fort Collins Utilities' or the East Larimer County of Fort Collins-Loveland water districts), the new entity must either: 1) be excluded from the boundaries of the established potable supply entity; or 2) get consent from the established potable supply entity to operate within their service area. There is an exception provided for circumstances where the established potable water supply entity is incapable of providing a reasonable level of service to the proposed development. Under state law, this exclusion / consent requirement effectively already applies to new potable water supply entities that are publicly-owned (like metro districts, special districts, and municipalities). This proposed provision in the Land Use Code would expressly extend this requirement to new potable water supply entities that are privately-owned (like by corporations or limited liability companies).

**Alternatives**

- Remove this requirement from the proposed code.
  - Pros:
    - Removes the City from the middle of the issue of whether privately-owned potable water supply entities should or must also be excluded / get consent from established potable water supply entities.
    - Potentially allows new, privately-owned water supply entities to innovate, provide cheaper water supply alternatives, and supply water in a manner that makes denser development in accordance with the vision of City Plan possible where it might not otherwise be economically feasible.
  - Cons:
    - From the perspective of the established potable water providers, including the City, removing this requirement would allow the potential for new, privately-owned potable water supply entities to operate within the established potable water provider's service area. Various policy concerns are raised by the prospect of small potable water supply entities in the GMA.
    - This more easily allows additional water providers in the Growth Management Area (GMA), adding additional complexity for water supply, including regional coordination on various issues, including drought response, and fees and rates. That some new potable water supply entities could be small and privately-owned, thus perhaps lacking economies of scale and elected representation adds potential additional considerations.

See Council Work Session: Water Resources Matters in the Fort Collins Growth Management Area: Study Report Results, January 24, 2023:

<https://mccmeetings.blob.core.usgovcloudapi.net/fortcollco-pubu/MEET-Packet-044c02ace41c4f9c9121400e25470558.pdf>

- This could harm the established potable water supply providers and their ratepayers by eliminating service in areas where service was already planned for and where expenses such as infrastructure or other less obvious costs such as treatment capacity have already been



accrued by the established potable water supply entity. In some instances, bonds may have been issued based, in part, on this service area. This could affect future rates and fees.

- Offers less certainty and transparency regarding where and when privately-owned water supply entities can operate.
- Alter the code requirement.
  - Pros: Staff was unable to find a reasonable compromise that would satisfy all parties with the concerns of this proposed code provision; however, staff would be open to exploring alternative language if there is a desire to do so.
  - Cons: The proposed language is based on an existing municipal code provision (Sec. 26-4) that gives general policy direction with the respect to the City respecting the service area boundaries of established potable water supply entities. The current language achieves the desired purpose as written.

## Staff Analysis

This is the most contentious issue of the proposed code update and staff do not believe an alternative exists that would resolve all stakeholder concerns. Staff based the proposed language, in part, on the following section of the municipal code:

*Sec. 26-4. - Dual supply of water and wastewater service.*

*If a property located within the City is in an area not supplied with both water and wastewater service from the City but is capable of receiving both water and wastewater service from the one (1) or more duly established quasi-municipal utility service districts, then the City shall not extend or provide either service to the property. The City may, however, extend either or both services to such property if the utility service district becomes incapable of providing a reasonable level of service to the property. Upon the review of the Water Board and the City administration, the City Council may waive any part or all of this Section.*

*(Ord. No. 164, 1986, § 1(112-7), 11-4-86; Ord. No. 117, 1996, § 5, 9-17-96; Ord. No. 28, 1998, § 4, 3-17-98)*

Staff relied on this code language as evidence of a general policy direction the City has historically taken to respect the service areas of other established potable water supply entities. Staff believes this is a reasonable middle ground to respect established potable water supply entities, as well as their investment and planning, and to allow for innovation. There are also existing laws that could require a new potable water supply entity to exclude from the service area of an established provider regardless of the inclusion of Section 3.13.5(C)(5)(c), however, staff believes that including the code provision provides greater transparency and eliminates confusion.

The code, as proposed, would require the new potable water supply entity to either exclude from the established entities' special district or seek consent from the established entity. There is an existing formal process to exclude property from a special district, roughly comparable to the de-annexation (or disconnection) process and that decision is appealable to the Board of County Commissioners and then District Court.

East Larimer County, Fort Collins Loveland, and West Fort Collins water districts have all expressed support for the inclusion of this code language and significant concern if the code provision is altered or removed. The City's Water Utility has also expressed support for this provision.

The team representing the Montava Development has expressed significant opposition to the proposed code language in this section and Section 3.13.6.(A) (5) because they believe it would give an established potable water supply entity more authority than it would otherwise legally have over future development

within the City. They have also argued that, if a new potable water supply entity is a private entity (as opposed to a governmental entity), they are not otherwise required to be excluded or get the consent for the established potable water supply entity. However, this argument has been questioned in discussions with certain water districts and may be disputed.

Specific feedback and proposed redline changes from all parties are included in the packet.

## **NEXT STEPS**

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Staff will make any updates to the proposed code, as suggested, then draft an ordinance for first reading.

## **ATTACHMENTS**

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1. Ordinance No. 074, Postponed Indefinitely on May 16, 2023
2. Redlined Code Language Comparison
3. Best Practices from Other Jurisdictions
4. Water Adequacy Public Comments
5. Draft Planning and Zoning Commission Meeting Minutes, April 26, 2023
6. Water Adequacy Presentation

**This Ordinance was postponed indefinitely to allow staff time  
to gain further insight regarding Council's preference**

**ORDINANCE NO. 074, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING THE LAND USE CODE TO INCLUDE REGULATIONS FOR  
MAKING WATER ADEQUACY DETERMINATIONS**

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

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

WHEREAS, pursuant to Colorado Revised Statutes ("C.R.S.") Section 29-20-301, et seq., the City may not approve an application for a development permit until the City has determined that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate; and

WHEREAS, water is an increasingly scarce resource and ensuring that a proposed development will have an adequate water supply is essential to protecting public health, safety, and welfare, and ensuring that growth and development within the City is sustainable; and

WHEREAS, the City wishes to update and formalize its water adequacy determination process by adopting the procedure and standards set forth in this Ordinance; and

WHEREAS, on April 26, 2023, the Planning and Zoning Commission unanimously recommended that City Council not adopt the proposed water adequacy determination Land Use Code Changes to allow more time for consideration of the impacts of the timing of the determination, the implications of Section 3.13.5(C)(5) for applicants and water suppliers, in particular regarding the ability of an applicant to appeal the decision of a water supplier; and

WHEREAS, City Council finds that the water adequacy determination provisions set forth in this Ordinance are in the best interests of the City of Fort Collins.

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

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

Section 2. That Section 3.7.3 of the Land Use Code is hereby amended by the addition of a new Subsection (G) which reads in its entirety as follows:

### 3.7.3 - Adequate Public Facilities

(G) **Water Supply Adequacy.** The determination required by C.R.S. § 29-20-301, et seq., whether the proposed water supply for development is adequate and is not addressed in this Section but is set forth in Division 3.13.

Section 3. That the Land Use Code is hereby amended by the addition of a new Division 3.13 which reads in its entirety as follows:

#### **Division 3.13 - Water Adequacy Determinations**

##### **Section 3.13.1 Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to C.R.S. § 29-20-301, et seq. The specific purposes are to:

- (1) Fulfill the C.R.S. § 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”;
- (2) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (3) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (4) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (5) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (6) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

##### **Section 3.13.2 Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

- (1) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements if the term of use is three (3) consecutive years or less and identified as such on an approved landscape plan.
- (2) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

### **Section 3.13.3 Application.**

- (A) ***Application Timing.*** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to the following:
  - (1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
  - (2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
- (B) ***Separate Applications.*** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems unless the Director determines that a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.
- (C) ***Material Changes.*** The City shall make a determination that a proposed water supply is adequate only once for each portion of a development served by a

different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

- (D) ***Application After Director Denial.*** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, that addresses the stated reason or reasons for denial.

#### **Section 3.13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities**

(A) ***Application Requirements.***

- (1) Requests under this Section shall include a letter as described in Subsection (a), unless exempted pursuant to Subsection (b).
  - (a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity that contains the following information:
    1. An estimate of the water supply requirements for the proposed development through build-out conditions;
    2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
    3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions;
    4. Water conservation and/or water demand management measures, if any, that may be implemented within the proposed development;

5. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions;
6. An affidavit signed by the entity manager attesting that to the best of their knowledge, the entity is in compliance with all applicable regulations; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

All letters shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3.13.3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

(b) The letter described in Subsection (a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
5. Includes a general description of the established potable water supply entity's water obligations, such as a general description of customer demands and operational water delivery obligations, such as augmentation requirements and return flow obligations;

6. Includes a general description of the established potable water supply entity's water supply system and water rights portfolio; and
7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations.

All water supply plans, or other plans that cumulatively provide the information required above shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

(2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:

- (a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;
- (b) Stating its ability to provide an adequate water supply for the proposed development;
- (c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and
- (d) Providing the length of time the letter is valid for should the proposed development not occur immediately.

(B) ***Review of Application.*** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) ***Standards.*** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.

(D) ***Decision.***



- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:
  - (a) Approve the application finding that the proposed water supply is adequate;
  - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### **Section 3.13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) ***Application Requirements for Other Potable Water Supply Entities.*** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:
  - (1) A summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality

test results and proposed methods of water treatment from a registered professional engineer or water supply expert;

(c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;

(d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, homeowners' or property owners' association, or other taxes or fees that are also uniquely applicable to the proposed development to be served by the other potable water supply entity.

(5) Approval documentation from other regulatory agencies such as CDPHE. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.

(6) Detailed process diagrams stamped by a registered professional engineer on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.

(7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

(8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and

then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Subsection 3.13.4(A)(2); or as required based on any material changes to:

- (a) Any of the requirements set forth in this Section;
- (b) The reported water supply as set forth in Section 3.13.3(C); or
- (c) The proposed development, as determined by the Director.

**(B) *Review of Application.***

- (1) *Agreement on Costs.* Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) *Review.***

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in Subsection 3.13.5(B)(1). The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.

**(C) *Standards.*** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

- (1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;

- (b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and
  - (c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - (b) Having ability to acquire a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
- (3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.
- (4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  - (b) If the water supply system includes a water treatment facility, include the class of facility and treatment processes and provide information that the level of operations is equivalent or better as required by CDPHE, and demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;

- (c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  - (d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.
- (5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;
  - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  - (c) For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.
- (D) **Modification of Standards.** If a potable water supply entity cannot meet the standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H) for granting a modification, the Director may also grant a modification if such modification would not be detrimental to the public good and the standard as modified is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) **Decision.**

- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
  - (a) Approve the application finding that the proposed water supply is adequate;
  - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for the development is being provided by the approved entity.

### **Section 3.13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

- (A) ***Application Requirements for Non-Potable Water Supplies.*** Applications for a water adequacy determination for all or portions of a development to be served with non-potable water shall include all of the following:
  - (1) Summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:

- (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year, including any augmentation requirements;
  - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the Land Use Code.
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
  - (5) Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system when applicable. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section.

(6) Such other information as may be required by the Director.

**(B) *Review of Application.***

(1) *Agreement on Costs.* Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) *Review.***

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in Subsection 3.13.6(B)(1). The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

(c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) *Standards.*** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

(1) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

(2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) Relying upon a renewable and/or sustainable physical supply of water;

(b) Having a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other



inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and

(c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

(3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

(a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and

(b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

(4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

(a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and

(b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

(1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:

(a) Approve the application finding that the proposed water supply is adequate;

- (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) The written determination shall be included in the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
  - (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system. No building permit may be issued until all conditions have been met.
  - (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 4. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of the following ten definitions which read in their entirety as follows:

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established potable water supply entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-potable water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-potable water supply entities* shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

*Other potable water supply entities* shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

*Potable water* shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water adequacy determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that supplies, distributes, or otherwise provides water at retail.

*Water rights portfolio* shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

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

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Mayor

ATTEST:

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City Clerk

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

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Mayor

ATTEST:

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City Clerk

**Amend Section 3.7.3, Adequate Public Facilities**Add Subsection (G):

(G) **Water Supply Adequacy.** The determination required by Section 29-20-301, et seq., C.R.S., whether the proposed water supply for development is adequate is not addressed in this Section but is set forth in Division 3.12-13.

**Division 3.13 - Water Adequacy Determinations****Section 3.1213.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”;
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.1213.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

(A) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements if the term of use is three consecutive years or less and identified as such on an approved landscape plan.

(B) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

**Section 3.1213.3 Application.**

- (A) **Application Timing.** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to ~~any of~~ the following:
- (1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6); if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
  - (2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity; or and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
  - ~~(3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.~~
- (B) **Separate Applications.** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required, unless the Director determines that a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.
- (C) **Material Changes.** The City shall make a ~~Water Adequacy Determination~~ determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought ~~are~~ materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (D) **Application After Director Denial.** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, that addresses the stated reason or reasons for denial.

### Section 3.1213.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

#### (A) Application Requirements.

~~(1) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include the following:~~

- ~~(1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and~~
- ~~(2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.~~
- ~~(3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.~~

~~(2)~~(1) Requests under this Section shall also include a letter as described in Subsection (1a), unless exempted pursuant to Subsection ~~((2) or (3), or both(b)).~~

(a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity stating that contains the following information:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions including long term variability and future climate risk;
- ~~4.~~ Water conservation measures, if any, that may be implemented within the proposed development;
- ~~5.4.~~ and, or water demand management measures, if any, that may be implemented to address hydrologic variations within the proposed development;
- ~~6.5.~~ Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all under various hydrologic conditions; and
6. An affidavit signed by the entity manager attesting that to the best of their knowledge the entity is in compliance with all applicable regulations; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

All letters shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services

Department. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once and updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3.13.3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

~~(1) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.~~

(b) The letter described in Subsection (1a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:

1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
2. Has a minimum twenty-year planning horizon;
3. Lists the water conservation measures, if any, that may be implemented within the service area;
4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
5. Includes a general description of the established potable water supply entity's water obligations; such as a general description of customer demands and operational water delivery obligations, such as augmentation requirements and return flow obligations;
6. Includes a general description of the established potable water supply entity's water supplies; supply system and water rights portfolio; and
7. Includes an estimate of affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations.

~~7. All water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and~~

Has been reviewed by plans, or other plans that cumulatively provide the information required above shall be provided to City Council and is for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council review requirement with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection 3.13.4(A)(2) but should be referenced within the letter content in addition to what is outlined in Subsection 3.13.4(A)(2).

(2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:

- (a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;
- (b) Stating its ability to provide an adequate water supply for the proposed development;
- (c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and
- (d) Providing the length of time the letter is valid for should the proposed development not occur immediately.

**(B) Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

**(C) Standards.** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.

~~To **Decision.** issue a Water Adequacy Determination under this section, the Director must find that:~~

(D) The statements in

(1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:

(a) Approve the application and associated materials finding that the proposed water supply is adequate;

~~(a)(b)~~ Approve the application with conditions finding the proposed water supply is adequate provided the conditions are complete, correct, and reliable; and met; or

~~(1) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.~~

(c) Deny the application finding that the proposed water supply is inadequate.

(2) All water adequacy determinations ~~Decision.~~ The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.

(3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section. No building permit may be issued until all conditions have been met.

~~(1)(4)~~ The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.



### Section 3.1213.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:

(1) A summary document linking the information to the standard of review.

(2) Report including information required under Section 29-20-304(1), C.R.S.:

(a) An estimate of the water supply requirements for the proposed development through build-out conditions;

~~(1) ; and~~

~~(2)(1) Report including information required under Section 29-20-304(1), C.R.S.:~~

~~(a) An estimate of the water supply requirements for the proposed development through build-out conditions;~~

(a)(b) A description of the established potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer or water supply expert;

(b)(c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;

~~(c)(d)~~ An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;

~~(d) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;~~

(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.

(2)(3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

(3)(4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development to be served by the other potable water supply entity.

~~(2)~~ Approval documentation from other regulatory agencies such as CDPHE.

(5) Detailed- At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.

~~(4)(6)~~ Detailed process diagrams stamped by a registered professional engineer on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.

~~(7)~~ Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

~~(8)~~ An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Section 3.13.4.(A) (2); or as required based on any material changes to:

(a) Any of the requirements set forth in this Section;

(b) The reported water supply as set forth in Section 3.13.3(C); or

(c) The proposed development, as determined by the Director.

~~8.1. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.~~

**(B) Review of Application.**

(1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

(a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.

(b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.

(c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section ~~3.12.3~~.

~~(C)~~ **Standards.**

~~(D)(C)~~ To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

(1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:

(a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;

- (b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and
  - (c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - (b) Having ability to acquire ~~the~~ water rights ~~or water contracts~~ portfolio that ~~provide~~ provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
- (3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.
- (4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  - (b) If the water supply system includes a water treatment facility, include the class of facility and treatment processes and provide information that the level of operations is equivalent or better as required by CDPHE, and demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and
  - (c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  - (d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.
- (5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing the applicant has or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;

- (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
- (c) For lands within the water service area of an established ~~Water Provider~~potable water supply entity, establishing that: the lands to be served by the other potable water supply entities have been removed from the water service area of ~~an~~the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

~~(E)~~(D) **Modification of Standards.** If a potable water supply entity cannot meet the ~~Fort Collins Utility~~Fort Collins standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H), for granting a modification, the Director ~~must find that~~may also grant a modification if such modification would not be detrimental to the public good and the standard as modified ~~standard~~is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

~~(F)~~(E) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the ~~Based upon the~~ information provided by the applicant and developed by the City and any consultants. ~~the Director shall issue all water adequacy determinations in writing including specific findings and shall either:~~

- (a) Approve the application finding that the proposed water supply is adequate;
- (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
- (c) Deny the application finding that the proposed water supply is inadequate.

~~(4)~~(2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed ~~to review the upon which the water adequacy determination was based for the~~ proposed water supply and proposed water supply system, and that record shall become part of the associated development application.

~~(2)~~(3) The Director ~~shall make Water Adequacy Determinations, conditional approvals, and denials~~may impose conditions of ~~Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved.~~ approval that when met, as determined by the Director shall be entitled to make a Water Adequacy Determinations conditioned upon the, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that ~~the applicant~~acquiring acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure

for the water supply system. No building permit may be issued until all conditions have been met.

~~(3)~~(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

~~(4)~~(5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for ~~this~~the development is being provided by the approved entity.

### Section 3. ~~1213~~.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

~~(B)~~(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a water adequacy determination for all or portions of a development to be served with ~~untreated non-~~potable water shall include all of the following:

(1) Summary document linking the information to the standard of review.

~~(2) Report including information required under Section 29-20-304(1), C.R.S.:~~

~~(a) An estimate of the water supply requirements for the proposed development through build-out conditions;~~

~~(1) ; and~~

~~(5)(1) Report including information required under Section 29-20-304(1), C.R.S.:~~

~~(g)(a) An estimate of the water supply requirements for the proposed development through build-out conditions;~~

(b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;

(c) A description of all elements of the water rights portfolio either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;

(d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on including any augmentation requirements;

~~(e) Water conservation measures, if any, that may be implemented within the development;~~

~~(f)~~(e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

~~(g)~~(f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the ~~development code;~~ Land Use Code.

~~(2)~~(3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

~~(3)~~(4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

~~(4)~~(5) Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system- when applicable. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section.

~~(5)~~(6) Such other information as may be required by the Director.

~~(C)~~(B) **Review of Application.**

(1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
- (c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

~~(D)~~ **Standards**

~~(E)~~(C) . To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

~~(1)~~ The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

~~(2)~~(1) providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;

~~(3)~~(2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

- (a) Relying upon a renewable and/or sustainable physical supply of water;
- (b) Having a water rights ~~or water contracts~~ portfolio that ~~provide~~ provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) ~~in~~ all under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and



- (c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand ~~in all~~under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent or more stringent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

~~(4)~~(3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

- (a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and
- (b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

~~(5)~~(4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

- (a) Establishing the applicant has or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and
- (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

~~(F)~~(D) **Decision.**

(1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on~~Based upon~~ the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:

- (a) Approve the application finding that the proposed water supply is adequate;
- (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
- (c) Deny the application finding that the proposed water supply is inadequate.

~~(4)~~(2) The written determination shall be included in the plan set for the associated development application, if approved. —The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

~~(2)~~(3) The Director ~~shall make Water Adequacy Determinations, conditional approvals, and denials~~may impose conditions of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. approval that when met, as determined by the Director shall be entitled to make a Water Adequacy Determinations conditioned upon, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant ~~acquiring~~acquire the required water

right decrees and water contracts for the water ~~rights~~supply system. No building permit may be issued until all conditions have been met.

~~(3)~~(4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### **Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established potable water supply entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-potable water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-potable water supply entities* shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

*Other potable water supply entities* shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

*Potable water,* shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water adequacy determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, ~~at the time of the application, or within three years of application,~~ supplies, distributes, or otherwise provides water at retail.

*Water rights portfolio* shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.



*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

DRAFT

### Best Practices from Other Jurisdictions

Staff conducted research on how other jurisdictions handle the water adequacy review process. A summary of the information collected is below. It is worth noting that many municipalities have not been faced with the challenge of regulating a private water supply system. This is an innovative/novel idea and there is not much basis to find comparisons. Most municipalities have their own municipal service or obtain service through one or more special districts. It is more likely a situation that a county jurisdiction might experience. The leader in code creation on the topic is La Plata County, with additional work being done in El Paso County.

Jurisdiction	Water Provider	Mechanism	Timing
Fort Collins	Municipal Utility w/water plan and Special Districts with water plans	Will Serve Letters	Building Permit
Windsor	Special Districts w/ water plan	Code Requirements	Building Permit
Loveland	Municipal Utility w/water plan		Building Permit
Denver	Denver Water (Special District) w/water plan		
Lakewood	Municipal Utility w/water plan and Special Districts with water plans	Water Service Form	Building Permit
Littleton	Denver Water (Special District) w/water plan	Will Serve Letters	Up to Building Permit
Thornton	Municipal Utility w/water plan	Will Serve Letters	Up to Building Permit
Commerce City	Special District w/ water plan	Will Serve Letters	Building Permit
Westminster	Municipal utility w/water plan		
Colorado Springs			
Larimer County	Special Districts		
El Paso County			
La Plata County	Has requirements for New Entities	Code Requirements	
Greeley			
Timnath	Special Districts w/ water plan		
Boulder			
Arvada	Municipal Utility w/water plan and Special Districts with water plans		

# Written Comment from Stakeholders

**From:** [Sandra Bratlie](#)  
**To:** [Jenny Axmacher](#); [Eric Potyondy](#)  
**Cc:** [Clay Frickey](#); [Scott E. Holwick](#); [Chris Pletcher - Contact](#)  
**Subject:** [EXTERNAL] RE: City of Fort Collins Water Adequacy Determination Review Code Updates  
**Date:** Wednesday, May 10, 2023 11:12:35 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Jenny,

The redlines are not showing again on this version. We did have one additional minor request in Section 3.13.4 (A) (1) (b) 7 on page 4

Change from:

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with **all applicable** regulations.

to:

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with **state and federal primary drinking water** regulations.

Thanks!

**Sandra Bratlie, P.E.**

*District Engineer* | **FCLWD**

**OFFICE:** 970.226.3104 x 106

**MOBILE:** 970.786.5273

[sbratlie@fclwd.com](mailto:sbratlie@fclwd.com)

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**From:** Jenny Axmacher <jaxmacher@fcgov.com>  
**Sent:** Wednesday, May 10, 2023 11:02 AM  
**To:** Sandra Bratlie <SBratlie@fclwd.com>; Eric Potyondy <epotyondy@fcgov.com>  
**Cc:** Clay Frickey <cfrickey@fcgov.com>; Scott E. Holwick <SHolwick@lyonsgaddis.com>; Chris Pletcher <cpletcher@fclwd.com>  
**Subject:** RE: City of Fort Collins Water Adequacy Determination Review Code Updates

**CAUTION:** Sent by an external sender. Do not open attachments, click web links, or reply unless you have verified this email is legitimate.

Additional changes were made to the proposed code based on feedback and they are highlighted in the attached document. This is the version of the code that will be in the Council Packet for next week's hearing.

# Bushong & Holleman PC

A t t o r n e y s • a t • L a w

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May 9, 2023

*Sent via Email: [jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com); [epotyondi@fcgov.com](mailto:epotyondi@fcgov.com)*

Jenny Axmacher, Principal Planner  
Eric Potyondi, Assistant City Attorney  
City of Fort Collins, CO

Re: Water Adequacy Code Revisions

Dear Jenny and Eric,

This letter is on behalf of the Montava entities. While we greatly appreciate the changes made so far to the water adequacy code, we are requesting that the red-lined changes in the attached document also be made. In addition to the brief explanations in the attached, please accept the following further explanation for the suggested changes.

1. For Northeast Fort Collins to develop consistent with the City's vision, with affordable housing and neighborhood communities, more economical and reliable water supply solutions are needed. Buying and dedicating CBT and WSSC shares to ELCO works better for small rural developments than for urban growth. The water adequacy code should not deprive the City or Montava of future water supplies that may be essential for the intended growth. To address this issue, we suggest the following:

3.13.5(C)(5)(c). This suggested edit (adding: "if otherwise required by Colorado law") simply protects legal rights that exist to provide an alternative water solution. The code should not inadvertently deprive future developments of such rights by granting districts veto power over alternative water supplies if such authority does not exist. For example, where a statute or court order authorizes a private water solution within an established district, the suggested edit ensures the code does not usurp that authority by still requiring the district's consent or exclusion.

3.13.6(A)(5). These suggested edits accomplish two things. First, similar to the above concern, it protects legal rights that exist under Colorado law to provide an alternative nonpotable water solution. Second, it retains the City's discretion to waive the requirement if the established district "is incapable of providing a reasonable level of service." The City currently has that authority at Code 26-4 and should not waive it in

Jenny Axmacher and Eric Potyondi

May 9, 2023

Page 2 of 2

these amendments. The City added similar language to the potable service provision (3.13.5(C)(5)(c)) and the same should apply to non-potable service.

2. “Other potable water supply entities” will be critical in developing new water supplies for the City within established districts. Thus, it is important that the code allows for and encourages a fair assessment of such new water supplies.

3.13.5(A)(4). This provision assesses the costs of the other potable water supply entities and includes in those costs any fees for metro districts or HOAs associated with the development. However, HOAs or metro districts exist for many developments and are not unique to other potable water supply entities. To ensure a fair assessment of costs of the other potable water supply entities, the costs of HOAs or metro districts should only be added to the extent they are uniquely applicable to the water service being provided by the other potable water supply entity.

Multiple code provisions. In numerous places within the code “other potable water supply entities” and “non-potable water supply entities” must model a one-in-fifty year drought. Although it is unclear why “established potable water supply entities” are not held to the same standard, our suggestion is to add “or equivalent standard” for each reference. For example, Montava used an even more robust modeling assumption to assess drought resiliency and, generally speaking, the method used will depend on the available data. The code should not preclude such modeling.

3.13.6(A)(2)(d). This paragraph presumes groundwater supplies will have augmentation requirements which is not always the case (e.g. Coffin Wells do not require augmentation and are prevalent in Northeast Fort Collins). We have suggested a minor clarifying change.

Thank you for considering the attached redlined changes and the associated explanations. If this raises any questions, please do not hesitate to contact us.

Very truly yours,

BUSHONG & HOLLEMAN PC



---

Steve Bushong

Encl.

cc: Max Moss

Dick Wolfe, P.E.

Calvin Miller, Ph.D.

DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

**Amend Section 3.7.3, Adequate Public Facilities**

Add Subsection (G):

(G) **Water Supply Adequacy.** The determination required by Section 29-20-301, et seq., C.R.S., whether the proposed water supply for development is adequate is not addressed in this Section but is set forth in Division 3.13.

**Division 3.13 - Water Adequacy Determinations**

**Section 3.13.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”;
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.13.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

- (A) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements if the term of use is three consecutive years or less and identified as such on an approved landscape plan.
- (B) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

## DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

**Section 3.13.3 Application.**

- (A) **Application Timing.** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to the following:
- (1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
  - (2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
- (B) **Separate Applications.** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems unless the Director determines that a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.
- (C) **Material Changes.** The City shall make a determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (D) **Application After Director Denial.** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, that addresses the stated reason or reasons for denial.

**Section 3.13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities**

- (A) **Application Requirements.**
- (1) Requests under this Section shall include a letter as described in Subsection (a), unless exempted pursuant to Subsection (b).
    - (a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity that contains the following information:



## DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions;
4. Water conservation and, or water demand management measures, if any, that may be implemented within the proposed development;
5. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions;
6. An affidavit signed by the entity manager attesting that to the best of their knowledge the entity in compliance with all applicable regulations; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

All letters shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once and updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

- (b) The letter described in Subsection (a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
  5. Includes a general description of the established potable water supply entity's water obligations, such as a general description of customer demands and operational water delivery obligations, such as augmentation requirements and return flow obligations;
  6. Includes a general description of the established potable water supply entity's water supply system and water rights portfolio; and

## DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations.

All water supply plans, or other plans that cumulatively provide the information required above shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

- (2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:
- (a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;
  - (b) Stating its ability to provide an adequate water supply for the proposed development;
  - (c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and
  - (d) Providing the length of time the letter is valid for should the proposed development not occur immediately.
- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Standards.** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.
- (D) **Decision.**
- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:
    - (a) Approve the application finding that the proposed water supply is adequate;
    - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
    - (c) Deny the application finding that the proposed water supply is inadequate.
  - (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.
  - (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards

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set forth in this Section. No building permit may be issued until all conditions have been met.

- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### Section 3.13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:
- (1) A summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the established potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees to the extent that are also uniquely applicable to providing the proposed water service development to be served by the other potable water supply entity.
  - (5) Approval documentation from other regulatory agencies such as CDPHE. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

**Commented [A1]:** An HOA or metro district may exist regardless of who supplies water. Since the purpose of this provision is to assess true costs of the other potable water supply entities, this should apply only to HOAs or metro districts to the extent uniquely applicable to the water service provided by the other potable water supply entity.

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- (8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Section 3.13.4.(A) (2); or as required based on any material changes to:
- (a) Any of the requirements set forth in this Section;
  - (b) The reported water supply as set forth in Section 3(C); or
  - (c) The proposed development, as determined by the Director.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) **Review.**
- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
  - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
  - (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.
- (C) **Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:
- (1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - (a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
    - (b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and
    - (c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
  - (2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

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- (a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
- (b) Having ability to acquire a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
- (3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.
- (4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  - (b) If the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  - (c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  - (d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.
- (5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;
  - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  - (c) For lands within the water service area of an established potable water supply entity, and if otherwise required by Colorado law, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.
- (D) **Modification of Standards.** If a potable water supply entity cannot meet the standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to

**Commented [A2]:** What is examined or modeled will depend upon the best available data. The City should be open to equivalent or more rigorous ways to assess drought resiliency.

**Commented [A3]:** This is similar to both ELCO's and Montava's prior suggestions. This paragraph should not usurp Colorado law. Montava desires to retain available legal rights to provide a private water solution.

The City should not pick winners and losers by inadvertently precluding legal options.

## DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H) for granting a modification, the Director may also grant a modification if such modification would not be detrimental to the public good and the standard as modified is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**(E) Decision.**

- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
  - (a) Approve the application finding that the proposed water supply is adequate;
  - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for the development is being provided by the approved entity.

### **Section 3.13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a water adequacy determination for all or portions of a development to be served with non-potable water shall include all of the following:
  - (1) Summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include

## DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

water quality test results and results of an analysis investigating any limitations of use due to poor quality;

- (c) A description of all elements of the water rights portfolio either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year including any based on augmentation requirements;
  - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the Land Use Code.
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
  - (5) Approval documentation from other necessary regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system if otherwise required by law. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.
  - (6) Such other information as may be required by the Director.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
  - (2) **Review.**
    - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
    - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

**Commented [A4]:** Not all groundwater supplies require augmentation. Coffin wells exist in Northeast Fort Collins and require no augmentation.

**Commented [A5]:** The changes to this paragraph are based upon similar concerns expressed above at paragraph 3.13.5(C)(5)(c). This last proposed sentence retains the City's current authority under the code to assess reasonableness of the established district's service and is identical to the last sentence already in 3.13.5(C)(5)(c).

## DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

- (c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.
- (C) **Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:
- (1) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - (a) Relying upon a renewable and/or sustainable physical supply of water;
    - (b) Having a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
    - (c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.
  - (3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - (a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and
    - (b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
  - (4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
    - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and
    - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.
- (D) **Decision.**
- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
    - (a) Approve the application finding that the proposed water supply is adequate;



DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

- (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) The written determination shall be included in the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established potable water supply entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-potable water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-potable water supply entities* shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

*Other potable water supply entities* shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

*Potable water* shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

DRAFT SUBJECT TO FURTHER REVIEW AND REVISION

*Water adequacy determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that supplies, distributes, or otherwise provides water at retail.

*Water rights portfolio* shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

DRAFT

**From:** [Mike Scheid](#)  
**To:** [Jenny Axmacher](#); [Eric Potyondy](#)  
**Cc:** ["Tim Goddard"](#); ["Brad Grasmick"](#); ["Richard Raines"](#)  
**Subject:** [EXTERNAL] RE: RE: Word Doc- water adequacy  
**Date:** Tuesday, May 9, 2023 3:40:51 PM

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Jenny & Eric,

ELCO asks that you consider the following change to section 3.13.5(C)(5)(c) in the proposed redline language provided on 5/3/23:

Change the last sentence of 3.13.5(C)(5)(c), which currently reads:

"The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development."

To Read:

"The Director may, however, waive this requirement if the applicant shows the established potable water supply entity is incapable of providing a level of service for the proposed development that is reasonably similar to the level of service it has historically provided to other developments."

Please let us know if you would like to discuss this proposed change.

Thanks,

Mike Scheid  
ELCO Water District  
232 South Link Lane  
Fort Collins, CO 80524  
(970) 493-2044

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**From:** Jenny Axmacher <jaxmacher@fcgov.com>  
**Sent:** Wednesday, May 3, 2023 3:09 PM  
**To:** Mike Scheid <mikes@elcowater.org>; Eric Potyondy <epotyondy@fcgov.com>  
**Cc:** Tim Goddard <timg@hfglawfirm.com>; 'Brad Grasmick' <brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>  
**Subject:** RE: RE: Word Doc- water adequacy

There is an issue with the redline file so I'm resending it.

.....  
**Jenny Axmacher, AICP**  
Pronouns: [she/her](#)  
Principal Planner

[City of Fort Collins](#)

---

**From:** Jenny Axmacher  
**Sent:** Wednesday, May 3, 2023 2:04 PM  
**To:** Mike Scheid <[mikes@elcowater.org](mailto:mikes@elcowater.org)>; Eric Potyondy <[epotyondy@fcgov.com](mailto:epotyondy@fcgov.com)>  
**Cc:** Tim Goddard <[TimG@hfglawfirm.com](mailto:TimG@hfglawfirm.com)>; 'Brad Grasmick' <[Brad@lcwaterlaw.com](mailto:Brad@lcwaterlaw.com)>; Richard Raines <[rraines@scwtp.org](mailto:rraines@scwtp.org)>  
**Subject:** RE: [EXTERNAL] RE: Word Doc- water adequacy

Hi Mike,  
Here is the draft code that will be in the City Council packet as well as a redline copy. I can include any additional public comment on the draft if it gets to me before 5/10.

Please let me know if you have any questions.  
Sincerely,

.....  
**Jenny Axmacher, AICP**  
Pronouns: [she/her](#)  
Principal Planner  
[City of Fort Collins](#)

---

**From:** Jenny Axmacher  
**Sent:** Tuesday, April 25, 2023 1:36 PM  
**To:** Mike Scheid <[mikes@elcowater.org](mailto:mikes@elcowater.org)>; Eric Potyondy <[epotyondy@fcgov.com](mailto:epotyondy@fcgov.com)>  
**Cc:** Tim Goddard <[TimG@hfglawfirm.com](mailto:TimG@hfglawfirm.com)>; 'Brad Grasmick' <[Brad@lcwaterlaw.com](mailto:Brad@lcwaterlaw.com)>; Richard Raines <[rraines@scwtp.org](mailto:rraines@scwtp.org)>  
**Subject:** RE: [EXTERNAL] RE: Word Doc- water adequacy

Hi Mike,  
Thank you for your feedback. Here's the updated draft and a redline copy. We'll continue to incorporate feedback as we prepare for the Council Packet deadline next week.

Sincerely,  
.....  
**Jenny Axmacher, AICP**  
Pronouns: [she/her](#)  
Principal Planner  
[City of Fort Collins](#)

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**From:** Mike Scheid <[mikes@elcowater.org](mailto:mikes@elcowater.org)>  
**Sent:** Friday, April 21, 2023 3:15 PM  
**To:** Jenny Axmacher <[jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)>; Eric Potyondy <[epotyondy@fcgov.com](mailto:epotyondy@fcgov.com)>  
**Cc:** Tim Goddard <[TimG@hfglawfirm.com](mailto:TimG@hfglawfirm.com)>; 'Brad Grasmick' <[Brad@lcwaterlaw.com](mailto:Brad@lcwaterlaw.com)>; Richard Raines <[rraines@scwtp.org](mailto:rraines@scwtp.org)>  
**Subject:** [EXTERNAL] RE: Word Doc- water adequacy

Jenny & Eric,

Included with this email is a word version of the City's proposed Water Adequacy Determination language with some ELCO suggested redline changes as well as comments. Some of the comments provide suggestions while others are in the form of questions. The comments that are in the form of questions are not necessarily intended to be requested revisions to the language but rather are issues that ELCO staff believes will need to be resolved as the process is developed.

Let me know if we need to discuss or answer any questions you may have.

Mike Scheid  
ELCO Water District  
232 South Link Lane  
Fort Collins, CO 80524  
(970) 493-2044

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**From:** Jenny Axmacher <[jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)>  
**Sent:** Tuesday, April 18, 2023 2:57 PM  
**To:** Mike Scheid <[mikes@elcowater.org](mailto:mikes@elcowater.org)>  
**Subject:** Word Doc- water adequacy

Here you go!

.....  
**Jenny Axmacher, AICP**  
Pronouns: [she/her](#)  
Principal Planner  
Community Development & Neighborhood Services  
[City of Fort Collins](#)  
281 N. College Ave.  
970-416-8089 office  
[jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)



Fort Collins City Council  
300 LaPorte Avenue  
Fort Collins, CO 80521

Re: Water Adequacy Determination

The East Larimer County Water District (“ELCO”) submits this letter as a supplement to its prior letter that was submitted to the Planning and Zoning Commission on April 26, 2023. This supplement addresses the question that was presented by the Planning Commission as to what appeal rights does an owner have if the board of directors of a special district, such as ELCO, denies an owner’s request to be excluded from the service area of the special district.

When the process is understood, it becomes evident that the decision-making process is both fair and comports fully with general due process principles. It is not an autocratic process that leaves an owner without an adequate remedy. The procedure is similar to an appeal of a decision of the City Planning Commission to the Fort Collins City Council and then the Larimer County District Court.

The multiple levels of appeal assure that the final decision made will not be arbitrary or subject to bias. Further, the county board of commissioners can override a denial by the board of the special district, and the district court can override a denial by the county board of commissioners. To the extent any member of the Planning Commission was left with a misunderstanding of the appeal process, ELCO apologizes for not being able to fully explain the process at the hearing before the Planning Commission.

To provide context to this supplement, the proposed amendment (the “Amendment”) to the Land Use Code to add Division 3.13—Water Adequacy Determination includes the following provision, §3.13.5(C)(5)(c), which ELCO strongly supports:

For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

In its prior letter, ELCO explained how this requirement serves the same public purpose as § 32-1-107, C.R.S. does with regards to preventing overlapping water service entities. To be clear, §3.13.5(C)(5)(c) simply mimics the statutory restriction that § 32-1-107 would impose on a potable water supply entity that is a metropolitan district or a special district. No metropolitan district or special district can provide water service within the service area of an existing water district without the consent of the existing water district. Section §3.13.5(C)(5)(c) then extends this



requirement to any potable water supply entity, regardless of the particular form of the entity. As explained in ELCO's prior letter, permitting a new potable water supply entity to operate within the service area of an existing water district may create substantial harm to the water district and the customers that rely on the water district for potable water service.

ELCO explained in its prior letter the important role that §3.13.5(C)(5)(c) will provide to assure that ELCO and other potable water service providers have performed the detailed and important analysis and findings required by § 32-1-501, C.R.S, before any decision is made to exclude land from the service area of the water district. Because a request for exclusion by an owner would not be required if the water district consented to overlapping water service, the supplement will focus on the procedure for a request for exclusion filed by the owner of the land sought to be excluded. Section 32-1-502 provides a separate procedure that allows the governing body of any municipality wherein territory within a special district is located, the board of any special district with territory within the boundaries of any municipality, or fifty percent of the fee owners of real property in an area of any municipality in which territory within a special district is located to petition the district court for exclusion of the territory described in the petition. This supplement will not address that process other than to note a different procedure is provided for that exclusion process. ELCO will not prematurely comment on any request that may come before the ELCO Board of Directors in the future, other than to explain the process that it will follow.

#### Petition Requesting Exclusion

The process begins with the fee owner or owners of one hundred percent of the property sought to be excluded filing a petition with the board of directors requesting that the property be excluded from the special district. The petition must provide the legal description of the property, must contain a notarized statement that the fee owner or owners consent to the exclusion of the property from the special district and provide a deposit of money sufficient to pay all costs of the exclusion proceedings.

After receiving the petition, the board of directors must provide notice of a public meeting to hear the petition. The notice must be published and state the place, time and date of the meeting, the names and addresses of the petitioners, if applicable, a general description of the area proposed for exclusion, and notice that all persons interested shall appear at the designated time and place and show cause in writing why the petition should not be granted or a resolution to approve the petition should not be finally adopted. The failure of any person in the district to file a written objection is treated as their assent to the exclusion.

#### The Hearing Procedure

At the hearing, the board of directors hears evidence on the following factors that, by statute, the board must take into consideration and make findings upon to determine whether to grant or deny the petition or to finally adopt a resolution to exclude the property:

(a) The best interests of all of the following:

(I) The property to be excluded;

- (II) The special district from which the exclusion is proposed;
- (III) The county or counties in which the special district is located;
- (b) The relative cost and benefit to the property to be excluded from the provision of the special district's services;
- (c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all of the properties within the special district's boundaries;
- (d) Whether the special district is able to provide services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area;
- (e) The effect of denying the petition on employment and other economic conditions in the special district and surrounding area;
- (f) The economic impact on the region and on the special district, surrounding area, and state as a whole if the petition is denied or the resolution is finally adopted;
- (g) Whether an economically feasible alternative service may be available; and
- (h) The additional cost to be levied on other property within the special district if the exclusion is granted.

If the board of directors, after considering all of the factors set forth above, determines that the property should not be excluded from the special district, it must order that the petition be denied or that the resolution be rescinded.

#### Appeal to the County Commissioners

If the petition is denied, an appeal of the denial may be filed with the board of county commissioners of the county in which the special district's petition for organization was filed for review of the board's decision. Any appeal must be taken no later than 30 days after the decision by the board of directors is entered. On appeal, the board of county commissioners must consider the same factors that the board of directors was required to consider but must make its own determination based on the record developed at the hearing before the special district board of directors as to whether the property should be excluded.

#### Appeal to the District Court

If the board of county commissioners votes to deny the exclusion, the owner may appeal that decision to the district court of the county which has jurisdiction of the special district. The appeal must be filed within 30 days of the county commissioner board's decision. On appeal, the district court must review the record developed at the hearing before the special district board of directors and, after considering all of the factors that the special district board and county board of commissioners must consider, must then make its own determination whether the property should be excluded.



The statutory procedure provided above provides an owner who seeks to withdraw their property from the boundaries of a special district, a full and fair opportunity to present their case in a meaningful manner that satisfies all due process requirements. Section §3.13.5(C)(5)(c), if adopted, will work with the above discussed procedure to assure that no potable water supply entity will be permitted to provide water service within the service area of an existing special district without either (i) obtaining the consent of the Special District or (ii) petitioning for and obtaining approval of exclusion according to the procedure discussed above. Only if the board of directors of the special district, the Larimer County Board of County Commissioners, and a judge of the Larimer County District Court all independently agree that the property should not be excluded would §3.13.5(C)(5)(c) work to prevent development because of the overlapping water service.

ELCO explained in its prior letter why the City has the power and authority to include §3.13.5(C)(5)(c) in the Amendment. ELCO also explained how that provision will promote the health, safety, prosperity, security and general welfare of the inhabitants of the special districts that would be impacted by a provider being able to provide potable water service within the service area of an existing special district. That purpose includes preventing unnecessary proliferation of water service providers that could result in a diffusion of local tax sources and double taxation of the persons who reside within overlapping services areas.

As ELCO previously explained, it makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same—overlapping services should be avoided as they result in additional unnecessary costs to the public and harm existing water service providers. ELCO, therefore, strongly supports the inclusion of the provision §3.13.5(C)(5)(c) in the Amendment.

Sincerely,



Mike Scheid  
General Manager  
East Larimer County Water District



West Fort Collins Water District • PO Box 426 • LaPorte, Colorado 80535  
 2711 North Overland Trail  
 Phone: 970.484.4881 • Fax: 970.484.8874

City of Fort Collins Planning and Zoning Commission  
 300 Laporte Avenue  
 Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The West Fort Collins Water District (“WFCWD”) joins in the attached letter submitted by the East Larimer County Water District (“ELCO”). Like ELCO, WFCWD generally supports the proposed amendment (the “Amendment”) to the Land Use Code to add Division 3.13—Water Adequacy Determination. Also, like ELCO, WFCWD shares the concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. WFCWD meets this need for developments within its service area. To approve a development located within WFCWD’s service area that would propose to rely on a potable water supply and service other than WFCWD could create the serious harm stated in ELCO’s letter.

For that reason, WFCWD also strongly supports the inclusion of the requirement stated in §3.13.5(C)(5)(c) of the Amendment that:

For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement will serve the public interest by promoting the policy of avoiding the unnecessary proliferation of water service providers that could result in an excessive diffusion of local tax sources and would facilitate the elimination of the overlapping of services. WFCWD agrees with ELCO that “[t]he dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public.”

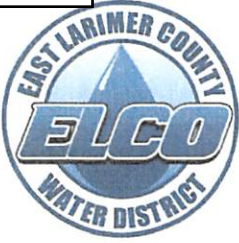
WFCWD, therefore, joins in ELCO’s support for the inclusion of the provision in the Amendment and would also strenuously object to any diminishment of the requirement in any final draft.

Respectfully,

Doug Bigge, Manager, West Fort Collins Water district



Item 1.



April 26, 2023

City of Fort Collins Planning and Zoning Commission  
300 Laporte Avenue  
Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The East Larimer County Water District ("ELCO") generally supports the proposed amendment (the "Amendment") to the Land Use Code to add Division 3.13—Water Adequacy Determination.<sup>i</sup>

ELCO strongly believes that the adoption of the Amendment will further the Colorado legislature's declaration in § 29-20-301(1)(b), C.R.S., which states the determination that an adequate water supply is available for proposed new developments, is "necessary for the preservation of public health, safety, and welfare and the environment of Colorado."

ELCO shares with the City the public concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. ELCO has operated its water delivery system for over 60 years with that public purpose in mind.

In particular, ELCO supports the requirement stated in §3.13.5(C)(5)(c) that:

For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement is consistent with and serves the same public purpose as § 32-1-107, C.R.S. does with regards to overlapping water service entities. That section prohibits a new or existing special or metropolitan district from seeking to provide water service within the service area of an existing water district unless certain requirements are met. Those requirements include that the board of directors of the water district consents to the new or existing special or metropolitan district providing the same service within its service area.

Likewise, §3.13.5(C)(5)(c) recognizes that the public purpose with regards to potable water service is best served if a new service does not result in overlapping water service areas without

the consent of the existing provider. The consent of the existing service provider or the exclusion of the area to be served by the new service from the service area of the existing service provider will allow the existing service provider to perform the important analysis provided in § 32-1-501, C.R.S, to assure that the operation of an overlapping service provider will not harm the public, including the customers of the existing service provider.

As it did with the adoption of Colorado Adequate Water Supply statutes (§§ 29-20-301 through 29-20-306, C.R.S.), the legislature has also declared that the provisions of the Special District Act “serve a public use and ... promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado.” § 32-1-102(1). The consent requirement in § 32-1-107 (and the similar requirement in §3.13.5(C)(5)(c)) serves this public purpose by preventing “unnecessary proliferation” ... “to avoid excessive diffusion of local tax sources” and to “facilitate the elimination of the overlapping of services ... [which can result in] double taxation” (32-1-102(2), (3)) of the persons residing within the service area.

ELCO believes that protecting this important public interest is essential in any development decision made by the City and believes that §3.13.5(C)(5)(c) adequately serves this vital interest. It makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same. Clearly, overlapping services resulting in additional unnecessary costs to the public are to be avoided.

This conclusion is also consistent with the implied scope of the determination of whether a water supply will be “adequate.” The term “adequate” as used in the Amendment is substantially similar to definition of “adequate” in § 29-20-302, C.R.S. It means “a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability....” The dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public.

There also should be no issue that the City has the power to impose the requirement stated in §3.13.5(C)(5)(c). Section 29-20-305, C.R.S., provides the City the authority to include in its water adequacy determination procedure the right and power to include any “information deemed relevant by the [City] to determine, in its sole discretion, whether the water supply for the proposed development is adequate.” As §3.13.5(C)(5)(c) promotes a proper adequacy determination of the water supply and concomitant distribution of the water supply, there should be no question that the City can impose this necessary requirement, and ELCO, therefore, strongly supports the inclusion of the provision in the Amendment and would strenuously object to any diminishment of the requirement in any final draft.

Item 1.

Sincerely,



Mike Scheid  
General Manager  
East Larimer County Water District

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<sup>i</sup> ELCO received an amended version of the Water Adequacy Determination yesterday. ELCO will provide any additional comments to the recent changes in a separate letter.

## **DRAFT SUBJECT TO FURTHER REVISION AND REVIEW**

### **Division 3.12 - Water Adequacy Determinations**

#### **Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

#### **Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

#### **Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

## **DRAFT SUBJECT TO FURTHER REVISION AND REVIEW**

- (B) **The** applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### **Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities**

- (A) **Application Requirements.**
- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
    - (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
    - (2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.
    - (3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.
  - (2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).
    - (a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:
      1. An estimate of the water supply requirements for the proposed development through build-out conditions;
      2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.
- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Standards.**
- To issue a Water Adequacy Determination under this section, the Director must find that:
- (1) The statements in the application and associated materials are complete, correct, and reliable; and
  - (2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.
- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's



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decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### **Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

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to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
  - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
  - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

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- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
  3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.
- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
  2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.
- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) **Decision.**
- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
  - (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

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acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

### **Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
  - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of the water rights either owned or planned for acquisition required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
  - (e) Water conservation measures, if any, that may be implemented within the development;
  - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

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- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
  - (6) Such other information as may be required by the Director.
- (B) **Review of Application.**
- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
  - (2) Review.
    - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
    - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
    - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.
- (C) **Standards**
- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
    - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
      - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
    - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
      - 1. relying upon a renewable and/or sustainable physical supply of water;
      - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
      - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

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- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
  - 1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  - 2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
  - 1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
  - 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

### **(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### **Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

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*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.



**From:** Steven Bushong <sbushong@BH-Lawyers.com>  
**Sent:** Friday, April 21, 2023 10:25 AM  
**To:** Jenny Axmacher  
**Cc:** Dick Wolfe; Calvin Miller; Eric Potyondy  
**Subject:** [EXTERNAL] Montava Water Adequacy

Hello Jenny

We haven't met in person yet, but I wanted to thank you for the opportunity to discuss the adequacy of Montava's planned water supply on Wednesday. I hope it was informative. A couple of points came up during the discussion that I wanted to follow up on. First, you mentioned an existing code provision that prevents the City from extending any water service within ELCO. Could you please point us to that code provision for my understanding? I was not able to find it. Second, you mentioned that you had been hearing different things from the other side on the ELCO approval issue. Since I presume all comments are public, can you please send us the comments you were referencing so we can understand that perspective and respond as needed?

Also, as we discussed, one of our principal concerns with the draft code provisions is that we believe they give an Established Water Provider such as ELCO more authority than it would otherwise legally have over future development within the City. Our specific concerns in 3.12.5(C) (1)(d)(3) and 3.12.6(A)(5) could be simply addressed by starting each paragraph with "Except for private water companies . . ." That would preserve the right to use a private water company where it makes sense to do so.

It also occurred to me that another approach would be to simply ensure that the new code provisions do not take away any legal rights, without the City taking a position on the legal issues. This would ensure the City does not inadvertently take away rights that would impact future development. The following is suggested language on that approach:

3.12.5(C) (1)(d)(3): "for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities ~~will be~~ **have been removed** from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity; **or the Other Potable Water Supply Entity is otherwise entitled to provide the proposed service as a matter of law.**"

3.12.6(A)(5): "Approval ~~Documentation~~ **that approval will be obtained** from other regulatory agencies **where necessary**, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system **unless the subject Non-Potable Water Supply Entities is otherwise entitled to provide the proposed service as a matter of law.**

I believe the above changes accomplish a few important things. (1) clarify that steps can be accomplished later (this allows the City if it chooses to condition approval); (2) it ensures the code does not inadvertently take away rights that exist under the law; and (3) for non-potable irrigation, it also clarifies that only necessary approvals will need to be obtained.



Thanks in advance for any information you can provide on my questions and please let me know if the City would like to discuss the above wording in the Code.

Best regards,

Steve

Steve Bushong  
Bushong & Holleman PC  
1525 Spruce Street, Suite 200  
Boulder, Colorado 80302  
Telephone: 303-431-9141  
Facsimile: 1-800-803-6648

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**DRAFT SUBJECT TO FURTHER REVISION AND REVIEW****Division 3.12 - Water Adequacy Determinations****Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

**Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

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- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities****(A) Application Requirements.**

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director, to be established collaboratively with each Established Potable Water Supply Entity. Such requests shall include the following:
- (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
  - (2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.
  - (3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.
- (2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).
- (a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:
1. An estimate of the water supply requirements for the proposed development through build-out conditions;
  2. A description of the physical source(s) of water supply that will be used to serve the proposed development. **If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;**

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
- (2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.

(D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

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decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

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to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

**(C) Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
    - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
    - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
  - (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
    - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
    - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

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- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
  3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.
- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
  2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.
- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) Decision.**
- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
  - (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

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acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

**Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
  - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of the water rights either owned or planned for acquisition required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
  - (e) Water conservation measures, if any, that may be implemented within the development;
  - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.



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- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

**(B) Review of Application.**

- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) Review.
  - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
  - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
  - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Standards**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water;
    - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
    - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

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- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
  - 1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  - 2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
  - 1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
  - 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the **lifetime of the** type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

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*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

### 29-20-301. Legislative declaration.

- 1) The general assembly:
  - a. Finds that, due to the broad regional impact that securing an adequate supply of water to serve proposed land development can have both within and between river basins, it is imperative that local governments be provided with reliable information concerning the adequacy of proposed developments' water supply to inform local governments in the exercise of their discretion in the issuance of development permits;
  - b. To that end, declares that while land use and development approval decisions are matters of local concern, the enactment of this part 3, to help ensure the adequacy of water for new developments, is a matter of statewide concern and necessary for the preservation of public health, safety, and welfare and the environment of Colorado;
  - c. Finds that it is necessary to clarify that, where a local government makes a determination whether an applicant for a development permit has demonstrated the proposed water supply is adequate to meet the needs of the development in accordance with the requirements of this part 3, the local government, in its sole discretion, not only makes the determination but also possesses the flexibility to determine at which stage in the development permit approval process the determination will be made; and
  - d. Further finds that it is also necessary to clarify that the stages of the development permit approval process are any of the applications, or any combination of the applications, specified in section 29-20-103 (1) as determined by the local government, and that none of the stages are intended to constitute separate development permit approval processes for purposes of section 29-20-303.

### 29-20-302. Definitions.

As used in this part 3, unless the context otherwise requires:

- 1) "Adequate" means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.
- 2) "Water supply entity" means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.

### 29-20-303. Adequate water supply for development.

- 1) A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.
- 2) Nothing in this part 3 shall be construed to require that the applicant own or have acquired the proposed water supply or constructed the related infrastructure at the time of the application.

## 29-20-304. Water supply requirements.

- 1) Except as specified in subsections (2) and (3) of this section, an applicant for a development permit shall submit estimated water supply requirements for the proposed development in a report prepared by a registered professional engineer or water supply expert acceptable to the local government. The report shall include:
  - a. An estimate of the water supply requirements for the proposed development through build-out conditions;
  - b. A description of the physical source of water supply that will be used to serve the proposed development;
  - c. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
  - d. Water conservation measures, if any, that may be implemented within the development;
  - e. Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - f. Such other information as may be required by the local government.
- 2) If the development is to be served by a water supply entity, the local government may allow the applicant to submit, in lieu of the report required by subsection (1) of this section, a letter prepared by a registered professional engineer or by a water supply expert from the water supply entity stating whether the water supply entity is willing to commit and its ability to provide an adequate water supply for the proposed development. The water supply entity's engineer or expert shall prepare the letter if so requested by the applicant. At a minimum, the letter shall include:
  - a. An estimate of the water supply requirements for the proposed development through build-out conditions;
  - b. A description of the physical source of water supply that will be used to serve the proposed development;
  - c. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
  - d. Water conservation measures, if any, that may be implemented within the proposed development;
  - e. Water demand management measures, if any, that may be implemented to address hydrologic variations; and
  - f. Such other information as may be required by the local government.
- 3) In the alternative, an applicant shall not be required to provide a letter or report identified pursuant to subsections (1) and (2) of this section if the water for the proposed development is to be provided by a water supply entity that has a water supply plan that:
  - a. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the water supply entity;
  - b. Has a minimum twenty-year planning horizon;
  - c. Lists the water conservation measures, if any, that may be implemented within the service area;
  - d. Lists the water demand management measures, if any, that may be implemented within the development;
  - e. Includes a general description of the water supply entity's water obligations;
  - f. Includes a general description of the water supply entity's water supplies; and
  - g. Is on file with the local government.

### 29-20-305. Determination of adequate water supply.

- 1) The local government's sole determination as to whether an applicant has a water supply that is adequate to meet the water supply requirements of a proposed development shall be based on consideration of the following information:
  - a. The documentation required by section 29-20-304;
  - b. If requested by the local government, a letter from the state engineer commenting on the documentation required pursuant to section 29-20-304;
  - c. Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development; and
  - d. Any other information deemed relevant by the local government to determine, in its sole discretion, whether the water supply for the proposed development is adequate, including, without limitation, any information required to be submitted by the applicant pursuant to applicable local government land use regulations or state statutes.

### 29-20-306. Cluster developments- inapplicability.

Nothing in this part 3 shall be deemed to apply to a rural land use process regarding the approval of a cluster development pursuant to part 4 of article 28 of title 30, C.R.S.



## Fort Collins-Loveland Water District

April 13, 2023

City of Fort Collins Planning and Zoning Commission

Dear Planning Commissioners:

On Tuesday April 11, 2023, the Fort Collins-Loveland Water District received the first notice from the City of Fort Collins Community Development Department regarding the proposed code review for new regulations regarding a Water Adequacy Determination that would have significant detrimental impact to the Fort Collins-Loveland Water District. The Planning and Zoning Work Session where this would be discussed will be held on Friday April 14 at 12:00pm. This provides less than 72 hours to evaluate and respond to proposed new regulatory code that has a very significant impact to the provision of potable water for a significant number of City residents today and into the future. Considering normal business hours and cutoff times for packet submittals 24 hours prior to the meeting, this provides effectively 12 business hours to respond to the City's proposed code. This is simply not adequate and indicates a lack of follow-through by staff on the stakeholder engagement direction provided by this commission and City Council.

The Fort Collins-Loveland Water District is a quasi-municipal corporation and a political subdivision of the state of Colorado with all the powers of a water district organized under Part 1, Article 1, Title 32, Colorado Revised Statutes to supply water for domestic and other public and private purposes by any available means. We serve a population in excess of 63,000 through more than 19,000 taps in an area that includes portions of the City of Fort Collins, City of Loveland, Town of Timnath, Town of Windsor and unincorporated Larimer County. Within the City of Fort Collins, we serve approximately 24,000 City Residents in City Council Districts 2, 3 and 4.

As an independent unit of government, FCLWD is not subject to the City's review and determination of adequacy of our water supplies compared to our existing or proposed service areas within the established and mutually agreed upon water service boundaries with our adjacent potable water providers. Submittal of Existing Potable Water Provider water supply plans to the City was indicated in the City's recorded video presentation introducing the proposed code posted on the City's website at <https://www.fcgov.com/planning/water-adequacy>. As a Title 32 Special District we take great exception to being regulated by an adjacent unit of government within our state authorized mission to deliver potable water.

In response to Section 3.12.4 (A) (1) The District does not manage our water supply commitments on a per-tap or per-subdivision basis. We manage our water resource supplies and our system demands on an aggregate basis, and continually acquire water resources to allow us to sell individual taps on demand for cash-in-lieu of water dedication. It is the District's goal to continue to maintain a water supply portfolio that equals or exceeds the aggregate demand from our customers. Due to this approach, when we issue a "Will Serve" letter, we are committing that adequate water pressure zones exist within our water distribution system to supply adequate water pressure at the customer tap, and that the overall transmission and distribution system has adequate capacity to support the general demand of this type of use. However, system distribution capacity is more often driven by fire flow

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## Fort Collins-Loveland Water District

requirements than domestic customer demands. Therefore, a "Will Serve" letter is not specific to, nor is it a reservation for a commitment of water resources to a particular tap or development.

In response to Section 3.12.4 (A) (2) (a) 1. Our water supply requirements are posted on our website in our Tap Fee Schedules. We do not provide development specific pro-forma analysis of water supply requirements on a per-application or per-subdivision basis, as our requirements are very straightforward based on customer type and tap size or units of multi-family residential proposed. Regarding Section 3.12.4 (A) (2) (a) 2. Our water sources are conmingled through the treatment process and are not obtained through dedication by individual developments, nor are they delivered to or accounted to only specific developments. The District acquires water for treatment that is compatible with the treatment processes used at our Soldier Canyon treatment plant, and we have full control over the water that we acquire to determine its suitability for treatment. We do not need to submit this to the City for evaluation or review of our analysis of the "potential impact on water treatment processes or the quality of delivered potable water." It is the District's sole determination of the adequacy of our water supply that informs our ability to sell water taps on demand, or restrict tap sales if needed. Further, responding to paragraph 3.12.4 (A) (2) (b) 8. The District does not need City Council review nor Community Development approval of our water supply plans to determine if our water supply is adequate for proposed tap applications.

We would appreciate support from the City of Fort Collins to recognize the authority vested by the State of Colorado in Title 32 Special Districts such as East Larimer County Water District (ELCO) and the Fort Collins-Loveland Water District (FCLWD) and to support the local water district's exclusive and sovereign authority to regulate the provision of potable water within their service areas. When the City entertains a competing proposal from a proposed potable water provider, it undermines the statutory authority of the existing Special District that has invested financial, water rights and infrastructure resources to provide service within their service area boundary.

The proposed code goes to great length to define a process to determine if a water supply is adequate, but it does very little to address protecting the exclusive right of an existing potable water provider to provide potable water within their service area. We suggest that already-defined water service areas within and surrounding the City of Fort Collins be protected through the City planning and Community Development processes, and only when the current provider formally relinquishes their ability or willingness to serve potable water, that other provider options be considered.

Sincerely,

Chris Pletcher, PE  
General Manager

Enclosures:

April 11, 2023 Email from City Staff Regarding Water Adequacy Code Review

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Item 1.

**Chris Pletcher**

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**From:** Jenny Axmacher <jaxmacher@fcgov.com>  
**Sent:** Tuesday, April 11, 2023 1:39 PM  
**To:** Chris Pletcher  
**Cc:** Eric Potyondy  
**Subject:** City of Fort Collins Water Adequacy Determination Review Code Updates  
**Attachments:** Att 1 - Proposed WADR Code with Header.pdf

Hi Chris,

I am a planner with the City of Fort Collins and got your contact information from Eric, our Water Attorney. The City has been working on a code update to our Land Use Code to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

Since your District is a water provider within our city limits, I wanted to make sure you were aware of the update and had a chance to review the draft and provide feedback. Fort Collins - Loveland Water District is currently considered an Established Water Provider under the proposed code updates. I have some time reserved next week if you'd like to meet to discuss it. Otherwise, feel free to send us feedback on it, or attend any of the public hearings. The adoption schedule is as follows:

April 14 – P&Z Work Session

April 26 – P&Z Public Hearing to make recommendation to Council

May 16 – Council Public Hearing/First Reading

Sincerely,

.....  
**Jenny Axmacher, AICP**

Pronouns: [she/her](#)

Principal Planner

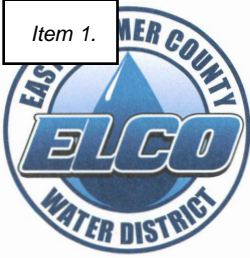
Community Development & Neighborhood Services

[City of Fort Collins](#)

281 N. College Ave.

970-416-8089 office

[jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)



April 26, 2023

City of Fort Collins Planning and Zoning Commission  
300 LaPorte Avenue  
Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The East Larimer County Water District (“ELCO”) generally supports the proposed amendment (the “Amendment”) to the Land Use Code to add Division 3.13—Water Adequacy Determination.<sup>i</sup>

ELCO strongly believes that the adoption of the Amendment will further the Colorado legislature’s declaration in § 29-20-301(1)(b), C.R.S., which states the determination that an adequate water supply is available for proposed new developments, is “necessary for the preservation of public health, safety, and welfare and the environment of Colorado.”

ELCO shares with the City the public concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. ELCO has operated its water delivery system for over 60 years with that public purpose in mind.

In particular, ELCO supports the requirement stated in §3.13.5(C)(5)(c) that:

For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement is consistent with and serves the same public purpose as § 32-1-107, C.R.S. does with regards to overlapping water service entities. That section prohibits a new or existing special or metropolitan district from seeking to provide water service within the service area of an existing water district unless certain requirements are met. Those requirements include that the board of directors of the water district consents to the new or existing special or metropolitan district providing the same service within its service area.

Likewise, §3.13.5(C)(5)(c) recognizes that the public purpose with regards to potable water service is best served if a new service does not result in overlapping water service areas without

the consent of the existing provider. The consent of the existing service provider or the exclusion of the area to be served by the new service from the service area of the existing service provider will allow the existing service provider to perform the important analysis provided in § 32-1-501, C.R.S., to assure that the operation of an overlapping service provider will not harm the public, including the customers of the existing service provider.

As it did with the adoption of Colorado Adequate Water Supply statutes (§§ 29-20-301 through 29-20-306, C.R.S.), the legislature has also declared that the provisions of the Special District Act “serve a public use and ... promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado.” § 32-1-102(1). The consent requirement in § 32-1-107 (and the similar requirement in § 3.13.5(C)(5)(c)) serves this public purpose by preventing “unnecessary proliferation” ... “to avoid excessive diffusion of local tax sources” and to “facilitate the elimination of the overlapping of services ... [which can result in] double taxation” (32-1-102(2), (3)) of the persons residing within the service area.

ELCO believes that protecting this important public interest is essential in any development decision made by the City and believes that § 3.13.5(C)(5)(c) adequately serves this vital interest. It makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same. Clearly, overlapping services resulting in additional unnecessary costs to the public are to be avoided.

This conclusion is also consistent with the implied scope of the determination of whether a water supply will be “adequate.” The term “adequate” as used in the Amendment is substantially similar to definition of “adequate” in § 29-20-302, C.R.S. It means “a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability....” The dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public.

There also should be no issue that the City has the power to impose the requirement stated in § 3.13.5(C)(5)(c). Section 29-20-305, C.R.S., provides the City the authority to include in its water adequacy determination procedure the right and power to include any “information deemed relevant by the [City] to determine, in its sole discretion, whether the water supply for the proposed development is adequate.” As § 3.13.5(C)(5)(c) promotes a proper adequacy determination of the water supply and concomitant distribution of the water supply, there should be no question that the City can impose this necessary requirement, and ELCO, therefore, strongly supports the inclusion of the provision in the Amendment and would strenuously object to any diminishment of the requirement in any final draft.



Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Scheid". The signature is fluid and cursive, with the first name "Mike" and last name "Scheid" clearly distinguishable.

Mike Scheid  
General Manager  
East Larimer County Water District

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<sup>i</sup> ELCO received an amended version of the Water Adequacy Determination yesterday. ELCO will provide any additional comments to the recent changes in a separate letter.

**Division 3.12 - Water Adequacy Determinations****Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate."
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Commented [ELEMENT1]:** Missing an end quote.

**Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

**Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

**Commented [MS2]:** Should this be done at the BDR stage? Doing it later, such as the Final (FDP) stage is too late. This determination should be made up front.

- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
  - (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
  - (2) A letter prepared by the Established Potable Water Supply Entity's ~~by a~~ registered professional engineer or ~~by a~~ water supply expert ~~from the Established Potable Water Supply Entity~~ stating:
    - (i) ~~the Established Potable Water Supply Entity's~~ its ability to provide an adequate water supply for the proposed development ~~and;~~
    - (ii) ~~A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development, including any and the conditions of the commitment, under which it will commit to serving the development.~~
- (2) ~~The Requests under this section shall also include a letter as described in subsection (2), shall also include the following: unless exempted pursuant to subsection ((2) or (3), or both).~~
  - (a) ~~A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:~~
    1. An estimate of the water supply requirements for the proposed development through build-out conditions;
    2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this

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description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various in all hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Approval Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
- (2) The applicant provider submitted appropriate documentation establishing that the applicant is in compliance with all applicable regulations.

**Commented [ELEMENT3]:** Does "the proposed water supply" refer to all rights including a portfolio of water supplies (water rights, contracts, IGAs) and operational systems (storage, water system integration) that are used to meet demands under variable hydrology or the certain dedication requirement to get a service commitment? ELCO interprets this to be the total water supply, including the water dedicated for the subject development, that the EPWSE has available in average and dry years to meet the total water demand for the uses of the subject development and prior customers. Is that correct?

**Commented [ELEMENT4]:** Although this language is copied from the statute, is "demand management" different from conservation in (A)(2)(a)5. above? Does demand management refer to demand-side drought mitigation? Will FC use this information or is the requirement just because the requirement is listed in the statute? How is this information used by FC?

**Commented [ELEMENT5]:** Will FC provide an example or form to follow?

**Commented [ELEMENT6]:** What is the distinction between:  
 • Conservation versus demand management and Service area versus "the development"?  
 Is this referring to demand standards?

**Commented [ELEMENT7]:** Clarify what this means.

**Commented [MS8]:** Will need to make it clear that if a development is planning to add demand to ELCO's system, that developer will be required to add the corresponding supply.

**Commented [MS9]:** I can see how a water supply plan that is updated every 10 years can generally forecast water supply needs based on land use planning for large areas but how can that same plan forecast future developments and their specific water supply needs / demands?

**Commented [ELEMENT10]:**

**Commented [TG11R10]:** The change assumes the applicant is intended. If this provision is intended to address the Established Potable Water Supply Entity, the referenced regulations need to be identified and included in the letter or plan provided by the Established Water Supply Entity.

**Commented [TG12]:** 29-20-305 adds the requirement: "Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development." I suggest adding a (3) that states the applicant has satisfied all conditions required for the Established Potable Water Service Entity to provide potable water service to the Project as provided in any letter of an Established Potable Water Service Entity submitted by the applicant or any conditions provided in any water supply plan of an Established Potable Water Service Entity on file ...



- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**

**Commented [ELEMENT13]:** How can a "planned" acquisition be relied upon for an adequate supply determination?

**Commented [TG14R13]:** If any water rights are conditional or not currently acquired, the Director should confirm all conditional or planned rights have been obtained prior to approval.

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
  - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
  - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a

**Commented [RR15]:** It seems that the developer will say its fine now, but how will you insure it will stay that way over time.

**Commented [RR16]:** Can there be a clarification if non-tributary is not considered renewable?

**Commented [RR17]:** Should this be own?

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modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

**Commented [RR18]:** Redundancy is not defined. Does this mean multiple sources? Interconnects? How is the City's redundancy defined as a standard?

- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Potable Water Supply Entity Provider, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

#### Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:
  - (1) Summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
    - (c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
    - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
    - (e) Water conservation measures, if any, that may be implemented within the development;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

**Commented [MS19]:** ELCO's requires that the proposed non-potable landscape irrigation supply be held to the same reliability standard as if it were a like irrigation supply from ELCO. (Supply factor = 1.5).

Will an applicant be subject to different requirements for the ELCO and City review processes or is the City planning to coordinate with ELCO in some way?

**Commented [ELEMENT20]:** What water quality testing is needed? Does this apply to non-potable water?

- (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.
- (B) Review of Application.**
- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) Review.
- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
- (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.
- (C) Approval Standards.**
- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
- (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
- providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
- (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
- relying upon a renewable and/or sustainable physical supply of water;
  - having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) ~~in all under various~~ hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable

**Commented [MS21]:** ELCO has its own assessment and approval process for developments seeking to use a non-potable supply for SF residential lot irrigation. How will the timing of this new City review align with the ELCO process?

**Commented [MS22]:** What if the findings of ELCO and the Director don't align? ELCO will not grant a developer a reduced raw water and plant investment fee requirement if the City approves a non-potable supply and ELCO does not. What if the reverse is true?

**Commented [RR23]:** Does this exclude non-tributary groundwater? Can this be clarified?

obligations, including augmentation requirements and return flow obligations; and

3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand ~~in all under various~~ hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.
- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
  2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**Commented [RR24]:** Non-potable water supply is defined as a supply without treatment below.pi

**(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Commented [TG25]:** Add, Nothing contained in this Section 3.12.6 shall satisfy or otherwise affect any requirements imposed by an Established Potable Water Supply Entity for the providing of water service by such Established Potable Water Supply Entity.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply

of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

**Commented [ELEMENT26]:** How is this defined?

**Commented [TG27R26]:** Would perpetual supply of water for the type of development proposed express the intent better?



### **Division 3.12 - Water Adequacy Determinations**

#### **Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

#### **Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

#### **Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

**Commented [MS1]:** Should this be done at the BDR stage? Doing it later, such as the Final (FDP) stage is too late. This determination should be made up front.

- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
  - (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
  - (2) A letter prepared by the Established Potable Water Supply Entity's ~~by a~~ registered professional engineer or ~~by a~~ water supply expert ~~from the Established Potable Water Supply Entity~~ stating:
    - (i) ~~the Established Potable Water Supply Entity's~~ its ability to provide an adequate water supply for the proposed development and;
    - (2)(3) (ii) ~~A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development, including any and the conditions of the commitment, under which it will commit to serving the development.~~
- (2) ~~The Requests under this section shall also include a letter as described in subsection (2), shall also include the following: unless exempted pursuant to subsection ((2) or (3), or both).~~
  - (a) ~~A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:~~
    1. An estimate of the water supply requirements for the proposed development through build-out conditions;
    2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this

description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various in all hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Approval Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
- (2) The applicant ~~provider~~ submitted appropriate documentation establishing that the applicant is ~~y are~~ in compliance with all applicable regulations.

**Commented [ELEMENT2]:** Does "the proposed water supply" refer to all rights including a portfolio of water supplies (water rights, contracts, IGAs) and operational systems (storage, water system integration) that are used to meet demands under variable hydrology or the certain dedication requirement to get a service commitment? ELCO interprets this to be the total water supply, including the water dedicated for the subject development, that the EPWSE has available in average and dry years to meet the total water demand for the uses of the subject development and prior customers. Is that correct?

**Commented [ELEMENT3]:** Although this language is copied from the statute, is "demand management" different from conservation in (A)(2)(a)5. above? Does demand management refer to demand-side drought mitigation? Will FC use this information or is the requirement just because the requirement is listed in the statute? How is this information used by FC?

**Commented [ELEMENT4]:** Will FC provide an example or form to follow?

**Commented [ELEMENT5]:** What is the distinction between:  
 • Conservation versus demand management and Service area versus "the development"?  
 Is this referring to demand standards?

**Commented [ELEMENT6]:** Clarify what this means.

**Commented [MS7]:** Will need to make it clear that if a development is planning to add demand to ELCO's system, that developer will be required to add the corresponding supply.

**Commented [MS8]:** I can see how a water supply plan that is updated every 10 years can generally forecast water supply needs based on land use planning for large areas but how can that same plan forecast future developments and their specific water supply needs / demands?

**Commented [ELEMENT9]:**

**Commented [TG10R9]:** The change assumes the applicant is intended. If this provision is intended to address the Established Potable Water Supply Entity, the referenced regulations need to be identified and included in the letter or plan provided by the Established Water Supply Entity.

**Commented [TG11]:** 29-20-305 adds the requirement: "Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development." I suggest adding a (3) that states the applicant has satisfied all conditions required for the Established Potable Water Service Entity to provide potable water service to the Project as provided in any letter of an Established Potable Water Service Entity submitted by the applicant or any conditions provided in any water supply plan of an Established Potable Water Service Entity on file ...

- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**

**Commented [ELEMENT12]:** How can a "planned" acquisition be relied upon for an adequate supply determination?

**Commented [TG13R12]:** If any water rights are conditional or not currently acquired, the Director should confirm all conditional or planned rights have been obtained prior to approval.

(1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
  - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
  - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a

**Commented [RR14]:** It seems that the developer will say its fine now, but how will you insure it will stay that way over time.

**Commented [RR15]:** Can there be a clarification if non-tributary is not considered renewable?

**Commented [RR16]:** Should this be own?

**Formatted:** Highlight

modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

**Commented [RR17]:** Redundancy is not defined. Does this mean multiple sources? Interconnects? How is the City's redundancy defined as a standard?

- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Potable Water Supply Entity-Provider, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

#### Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:
- (1) Summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
    - (c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
    - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
    - (e) Water conservation measures, if any, that may be implemented within the development;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

**Commented [MS18]:** ELCO's requires that the proposed non-potable landscape irrigation supply be held to the same reliability standard as if it were a like irrigation supply from ELCO. (Supply factor = 1.5).

Will an applicant be subject to different requirements for the ELCO and City review processes or is the City planning to coordinate with ELCO in some way?

**Commented [ELEMENT19]:** What water quality testing is needed? Does this apply to non-potable water?



- (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

**(B) Review of Application.**

- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) Review.
  - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
  - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
  - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Approval Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water;
    - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) ~~in all under various~~ hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable

**Commented [MS20]:** ELCO has its own assessment and approval process for developments seeking to use a non-potable supply for SF residential lot irrigation. How will the timing of this new City review align with the ELCO process?

**Commented [MS21]:** What if the findings of ELCO and the Director don't align? ELCO will not grant a developer a reduced raw water and plant investment fee requirement if the City approves a non-potable supply and ELCO does not. What if the reverse is true?

**Commented [RR22]:** Does this exclude non-tributary groundwater? Can this be clarified?

obligations, including augmentation requirements and return flow obligations; and

3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand ~~in all~~ under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

**Commented [RR23]:** Non-potable water supply is defined as a supply without treatment below.pi

- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Commented [TG24]:** Add, Nothing contained in this Section 3.12.6 shall satisfy or otherwise affect any requirements imposed by an Established Potable Water Supply Entity for the providing of water service by such Established Potable Water Supply Entity.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply

of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

**Commented [ELEMENT25]:** How is this defined?

**Commented [TG26R25]:** Would perpetual supply of water for the type of development proposed express the intent better?

**Division 3.12 - Water Adequacy Determinations****Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

**Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### **Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities**

**(A) Application Requirements.**

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
- (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
  - (2) A letter prepared by the Established Potable Water Supply Entity's registered professional engineer or water supply expert stating:
    - (i) the Established Potable Water Supply Entity's ability to provide an adequate water supply for the proposed development and;
    - (ii) the Established Potable Water Supply Entity is willing to commit to provide an adequate water supply for the proposed development, including any conditions of the commitment.
- (2) The letter described in subsection (2), shall also include the following:
- (a)
    1. An estimate of the water supply requirements for the proposed development through build-out conditions;
    2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.
- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Approval Standards.**
- To issue a Water Adequacy Determination under this section, the Director must find that:
- (1) The statements in the application and associated materials are complete, correct, and reliable; and
  - (2) The applicant submitted appropriate documentation establishing that the applicant is in compliance with all applicable regulations.
- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### **Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired



to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

**(C) Approval Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
    - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
    - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
  - (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
    - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
    - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
  3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.
- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
  2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  3. for lands within the water service area of an Established Potable Water Supply Entity, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.
- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) **Decision.**
  - (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
  - (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be

entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

### **Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
  - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
  - (e) Water conservation measures, if any, that may be implemented within the development;
  - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

**(B) Review of Application.**

- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) Review.
  - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
  - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
  - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Approval Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water;
    - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
    - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought,

when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
  - 1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  - 2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
  - 1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
  - 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

Item 1

**Hartford Homes Review of Draft Code Standards****4/17/23****Patrick McMeekin in Red**  
**Dave Thorpe in Blue****Planning and Zoning Commission  
Hearing Agenda**

Julie Blackhouse, Vice Chair  
 Michelle Haefele  
 Adam Sass  
 Ted Shepard  
 Samantha Stegner  
 York

City Council Chambers - City Hall West  
 300 Laporte Avenue  
 Fort Collins, Colorado

Virtual (Zoom or Telephone)  
 Cablecast on FCTV Channel 14 on Connexion &  
 Channels 14 & 881 on Comcast

*Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide 48 hours advance notice when possible.*

*A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.*

## Special Hearing

**April 26, 2023**  
**6:00 PM**

**Participation** for this hybrid Planning and Zoning Commission meeting will be available online, by phone, or in person.

**Public Participation (In Person):** Individuals who wish to address the Planning & Zoning Commission in person may attend the meeting located in City Council Chambers at City Hall, 300 Laporte Ave.

**Public Participation (Online):** Individuals who wish to address the Planning & Zoning Commission via remote public participation can do so through Zoom at <https://fcgov.zoom.us/j/99273488136>. Individuals participating in the Zoom session should also watch the meeting through that site.

The meeting will be available to join beginning at 5:45 p.m. on April 26, 2022. Participants should try to sign in prior to 6:00 p.m. if possible. For public comments, the Chair will ask participants to click the “Raise Hand” button to indicate you would like to speak at that time. Staff will moderate the Zoom session to ensure all participants have an opportunity to address the Commission.

*(Continued on next page)*



Item 1.

**Public Participation (Phone):** If you do not have access to the internet, you can call into the hearing via phone. Please dial: 253-215-8782 or 346-248-7799, with Webinar ID: 992 7348 8136.

The meeting will be available beginning at 5:45 p.m. Please call in to the meeting prior to 6:00 p.m., if possible. For public comments, the Chair will ask participants to click the “Raise Hand” button to indicate you would like to speak at that time – phone participants will need to hit \*9 to do this. Staff will be moderating the Zoom session to ensure all participants have an opportunity to address the Committee. Once you join the meeting: **keep yourself on muted status**. If you have any technical difficulties during the hearing, please email [smanno@fcgov.com](mailto:smanno@fcgov.com).

**Documents to Share:** If residents wish to share a document or presentation, City Staff needs to receive those materials via email by 24 hours before the meeting. Please email any documents to [smanno@fcgov.com](mailto:smanno@fcgov.com).

Individuals uncomfortable or unable to access the Zoom platform or unable to participate by phone are encouraged to participate by emailing general public comments you may have to [smanno@fcgov.com](mailto:smanno@fcgov.com). Staff will ensure the Commission receives your comments. If you have specific comments on any of the discussion items scheduled, please make that clear in the subject line of the email and send 24 hours prior to the meeting.

**As adopted by City Council Ordinance 143, 2022, a determination has been made by the chair after consultation with the City staff liaison that conducting the hearing using remote technology would be prudent.**

- **ROLL CALL**
- **AGENDA REVIEW**
- **PUBLIC PARTICIPATION**

Individuals may comment on items not specifically scheduled on the hearing agenda, as follows:

- Those who wish to speak are asked to sign in at the podium if they are in person
- The presiding officer will determine and announce the length of time allowed for each speaker.
- Each speaker should state their name and address and keep their comments to the allotted time.
- Any written materials should be provided to the Secretary for record-keeping purposes.
- In person participants will hear a timer beep once and the time light will turn to yellow to indicate that 30 seconds of speaking time remains and will beep again and turn red when a speaker's time to speak has ended.

- **CONSENT AGENDA**

The Consent Agenda is intended to allow the Planning and Zoning Commission to quickly resolve items that are non-controversial. Staff recommends approval of the Consent Agenda. Anyone may request that an item on this agenda be “pulled” for consideration within the Discussion Agenda, which will provide a full presentation of the item being considered. Items remaining on the Consent Agenda will be approved by the Planning and Zoning Commission with one vote.

The Consent Agenda generally consists of Commission Minutes for approval, items with no perceived controversy, and routine administrative actions.

Item 1.

No Items listed.

- **DISCUSSION AGENDA**

4. **Water Adequacy Determination Code Update**

**PROJECT DESCRIPTION:** This is a request for a recommendation to City Council regarding proposed Land Use Code changes to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

**APPLICANT:** City of Fort Collins  
413 S Bryan St  
Fort Collins, CO 80521

**STAFF ASSIGNED:** Jenny Axmacher, Principal Planner

- **OTHER BUSINESS**

- **ADJOURNMENT**

## Development Review Staff Report

Agenda Item 1

Planning &amp; Zoning Commission Extra Hearing – April 26, 2023

**Land Use Code Amendment – Water Adequacy Determination Review Code Update****Summary of Request**

This is a request for a recommendation to City Council regarding proposed Land Use Code changes to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

**Next Steps**

The Planning and Zoning Commission's recommendation will be forwarded to City Council as part of their consideration to adopt the proposed Land Use Code changes.

**Staff Recommendation**

Approval of the proposed Land Use Code changes.

**Applicant**

City of Fort Collins  
PO Box 580  
Fort Collins, CO 80522

**Staff**

Jenny Axmacher, Principal Planner  
p. (970) 416.8089  
e. [jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)

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## 1. Project Introduction

### A. BACKGROUND

Water is a crucial and constrained resource, and the City strives to ensure that development meets the community's vision and expectations for responsible resource management. City Plan includes policies to ensure water is used wisely and our community is prepared for a changing climate. The plan also supports managing water resources in a manner that enhances and protects long-term water quality, supply, and reliability for current and future residents.

The necessity for an updated water adequacy review program stems from the limited supply and high cost of water resources, which have resulted in developers pursuing more creative ways to provide water to their proposed developments, particularly projects striving to provide affordable housing or the denser development patterns called for in City Plan. One development contemplating a more unique and potentially innovative approach to supplying water resources is the Montava Planned Unit Development (PUD), which proposes a groundwater-based water supply for both potable and non-potable water service. The developer believes this system will improve the overall resiliency of the water supply for the area while also reducing the cost.

Because the City does not currently have a review process or criteria for “non-standard” water service models, including groundwater systems, new policy and code are needed to confirm that future residents are adequately served. While the Montava project has generated the immediate need for this type of review, staff believes a comprehensive program could have benefits for reviewing all new developments moving forward, regardless of the water source.

### B. REQUIREMENT FOR WATER ADEQUACY REVIEW

This review process is being proposed to further effectuate a Colorado state statute (Section 29-20-301, et seq., C.R.S.), which states:

*A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.*

For this regulation, the Colorado state statute defines some key terms, including the following. “‘Adequate’ means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.” “‘Water supply entity’ means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.”

Currently, development within the City only occurs within the boundaries of existing City (Fort Collins Utilities) and Special District water providers, such as Fort Collins-Loveland Water District and East Larimer County Water District, and the adequacy determination is made through the issuance of a “will serve” letter from the established water provider. The City receives a will serve letter from the provider during the building permit process for the new development. A will serve letter states that the provider has the infrastructure and capacity to provide water service to the proposed development project and commits to providing that service.

Pursuant to state statute, ‘will serve’ letters meeting certain requirements may satisfy the water adequacy determination, but staff will soon be faced with a proposal that is outside the bounds of the current system and needs a more robust and transparent process to evaluate the more complex proposal. It is partly the responsibility of the City to ensure that future residents are well served by an adequate system.



## 2. Comprehensive Plan & City Policy Alignment

### A. CITY PLAN

City Plan (2018) offers the following guidance related to water supply in the city. The proposed LUC changes align to this guidance:

*Principle LIV 9: Encourage development that reduces impacts on natural ecosystems and promotes sustainability and resilience.*

*Policy LIV 9.2 - OUTDOOR WATER USE Promote reductions in outdoor water use by selecting low-water-use plant materials, using efficient irrigation, improving the soil before planting and exploring opportunities to use non potable water for irrigation.*

*Principle ENV 6: Manage water resources in a manner that enhances and protects water quality, supply and reliability.*

*Policy ENV 6.1 - WATER RESOURCE PLANNING Partner and collaborate with water service providers to ensure adequate, safe and reliable water supplies in accordance with the Water Supply and Demand Management Policy. To the extent feasible, coordinate on supply and storage development and demand modeling.*

*Policy ENV 6.2 - WATER CONSERVATION AND EFFICIENCY Continue and enhance water conservation, efficiency and education programs in accordance with the City's Water Efficiency Plan. Consider new and revised land-use and site-planning standards to reduce water use in both new and redevelopment projects. Where possible, coordinate on programs and services to create consistent experiences for users regardless of their location and water service provider.*

*Policy ENV 6.3 - DROUGHTS AND VULNERABILITY Develop drought and vulnerability planning that takes into consideration the future impacts of climate change; potential demand changes from increased urban and multifamily developments; and other hazards and vulnerabilities, such as disruption of supplies due to wildfires. Partner and collaborate with water service providers in the GMA.*

*Principle SC 3: Minimize risks to life, infrastructure and property from natural hazards or exposure to hazardous materials.*

*Principle HI 1: Be a model for equitable, effective and transparent local governance.*

*Policy HI 1.8 - SERVICE PROVIDERS Coordinate closely with and promote coordination among service providers in needs assessment, facility siting and other matters to ensure continuing delivery of effective, equitable and efficient services.*

### B. HOUSING STRATEGIC PLAN

The Housing Strategic Plan (2021) provides the following guidance related to water supply. The proposed LUC changes align to this guidance:

*18. Increase awareness and opportunities for creative collaboration across water districts and other regional partners around the challenges with water costs and housing.*

*Why Prioritized? Water costs have a significant impact on housing development costs; addressing water cost challenges creates opportunity to improve affordability and housing product diversity. Acknowledges regional nature of water and seeks opportunities for education and collaborative solutions; potential for direct impact on sustainability and affordability.*

### C. CLIMATE ACTION PLAN

Our Climate Future (2021) provides the following guidance related to water supply within the City. The proposed LUC changes align to this guidance:

*Big Move 3 – Climate Resilient Community: People, buildings, watersheds and ecosystems are prepared for the threats of climate change.*

*CRC1 - Adopt a holistic approach to integrated water resource planning and management (One Water Approach)*



*CRC3 - Expand and enhance water efficiency programs and incentives.*

*CRC4 - Update codes to address existing and new developments' indoor and outdoor water efficiency.*

*Big Move 5 – Live, Work and Play Nearby: No matter where we live, we all can meet our basic daily needs without driving across town.*

*LWPN4 - Increase density and mixed uses through the land use code as guided by City Plan.*

*Big Move 7 – Healthy, Affordable Housing: Everyone has stable, healthy housing they can afford.*

*HAH3 - Increase the number and diversity of housing types and allow more homes per lot (density) via an update to the City's Land Use Code.*

## D. CITY STRATEGIC PLAN

The water adequacy determination review can be viewed as a tool kit to look at water affordability and support sustainable development patterns and objective 1.6 of the City's 2022 Strategic Plan.

*1.6 Transform regulations and revise procedures to increase clarity and predictability to ensure new development advances adopted City plans and policies.*

## 3. Summary of Proposed LUC Changes

The proposed Land Use Code changes may be found in Attachment 1, and include an amendment to Article Three, adding Division 3.12, and adding nine new definitions to Article Five, Section 5.1.2 Definitions. A summary of the proposed changes include:

### 1. Article Three, Division 3.12 – Water Adequacy Determinations

The proposed new division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S.

The subsequent sections outline the applicability, application, and procedures and standards for the three different review types:

- Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District.
- Other potable water supply entities such as new private water supplies or metro districts.
- Non-potable water supply entities, such as irrigation water supplied by metro districts

#### Established Entities

For established water suppliers, the code provides options for compliance through review of water supply plans or letters from engineers detailing how the water supply system functions. Once an initial approval is completed, the process would move forward similarly to what the City does now with will serve letters.

#### Other Entities

A more detailed process is proposed for other water providers and the City has identified the following characteristics for evaluation criteria:

- Water Quality
- Quantity of Water
- Dependability of Supply and Supplier
  - Supply Resiliency
  - System Redundancy

Is this different than what is done now?  
The initial approval scares me.





- Maintenance and Outages
- Availability of Supply
- Financial Sustainability of Supplier Capitalization

In general, the standards compare the new proposed system to the existing municipal utility.

### **Non-potable Entities**

The criteria for non-potable systems looks to make sure the supply has enough quantity and quality to support the associated uses such as irrigation for landscape.

## **2. Article Five, Division 5.1.2 – Definitions**

The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water* shall mean water, also known as drinking water, that is treated to state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination that the proposed water supply for development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservation district, water authority, or other public or private water supply entity that, upon application, or within three years of application, supplies, distributes, or otherwise provides water.

*Water supply system* shall mean all infrastructure planned or used to divert and convey water for development.

I agree. The implications of this code are really very significant and we feel there are major problems with this draft code. Those that develop non-pot systems should have been brought into this conversation much earlier than right before P&Z.

## **4. Public Outreach**

### **A. BACKGROUND**

This proposed Land Use Code change did not include specific public outreach meetings, however information on the code update was provided on the website, including an educational video. Staff will conduct stakeholder outreach meetings with the Special Districts and development stakeholders in the time between the P& Z work session and the P& Z hearing. Additional information on these meetings will be provided closer to the hearing date.

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Sure seems like this feedback should be gathered before going to P&Z

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The information for the hearing packet is posted in the Development Review webpage.

Notice (Posted, Written and Published)

Published Notice: April 9, 2023. Coloradoan

## 5. Recommendation

Staff recommends the Planning and Zoning Commission forward a recommendation to City Council to approve the proposed Land Use Code changes.

## 6. Attachments

1. Proposed Land Use Code Changes
2. Staff Presentation

**DRAFT SUBJECT TO FURTHER REVISION AND REVIEW****Division 3.12 - Water Adequacy Determinations****Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed until the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Design and adequacy are not the same. If the City wants to review adequacy, that should be done before the design process begins or in its very early stages.

**Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

This is too late. You could be getting ready to go under construction and find out your non-pot system is not viable

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(B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.

(C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Supplies  
Entities should  
be able to  
approve their  
own non-pot  
systems

Should not ELCO or FCLWD be able to  
make their own determination about  
their own ability to serve?

Also, if a ditch company operates their  
own non-pot system, or provides to a  
development in bulk, that entity should  
make the determination of their ability  
to serve.

### **Section 3.12.4 - Procedures and Standards for Water Adequacy Determination Water Supply Entities**

#### **(A) Application Requirements.**

(1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:

- (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
- (2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.
- (3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.

(2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

To be clear, is this  
section ONLY for  
potable? Please  
clarify.

How are these  
different?

This seems like the  
City trying to get into  
ELCO and FCLWD's  
business

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
4. Water conservation measures, if any, that may be implemented within the proposed development;
5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

Same comment as above.

What happens if ELCO or FCLWD miss one of these?

How do these requirements affect them and their daily operations? It cannot be the developer's responsibility to make sure that third party quasi-governmental agencies are in compliance with this section in order for their developments to proceed.

- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

Same as above. This is way too late in the process.

- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
  - (2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.
- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's



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subject to appeal pursuant to the Land Use Code or Code of the City of Fort

Can this whole code just boil down to this one section? Unless there are problems with existing providers, why include the other sections? Those entities already review non-pot plans to ensure there is adequate non-pot supply before they authorize inside use-only taps. They also confirm they have potable supply.

**Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:

- (1) A summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
  - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
  - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
  - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
  - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
  - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
- (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
- (5) Approval documentation from other regulatory agencies such as CDPHE.
- (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
- (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

**(B) Review of Application.**

- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

Nobody in their right mind should pursue this

This is really vague. Approvals from CDPHE for what?

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to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

**(C) Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
  3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
  3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

In in instance such as this, ALL rights should be in-hand before making an application. Proving they can be acquired seems odd and probably too late in the process.

In in instance such as this, do you require a letter from the aug plan? That should be required.

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If a third party were to propose to become its own water district, I would think it would be in the public's interest for the decision maker for a modification to be above the Director. These are reasonable baseline standards. If they cannot be met, it should be elevated in the public process.

- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
  3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

(d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

(D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins

**Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:



If there is a new, private potable water provider and they also want to deliver non-pot, then this section makes sense. Otherwise, it makes development far more complicated without appearing to address an established problem.

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acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

### **Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:

- (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
- (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results of an analysis investigating any limitations of use due to poor quality;
- (c) A description of the water rights either owned or planned for acquisition for the proposed water supply;
- (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year on augmentation requirements;
- (e) Water conservation measures, if any, that may be implemented within the development;
- (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
- (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;

- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

To what standards is it held, though?

For surface water and reservoir water, this is not a reasonable standard, as the sources of those waters constantly varies for the ditch companies.

Is this intended to mean in homes? Or in common areas?

This whole section is very vague and talks about subjects but doesn't have any specific standards.

This should be controlled by the Water Provider and not the City. If the system is in the utilities District boundary than yes.

Agreed. This creates an opportunity for conflicting standards between COFC and other providers.

This should not be the Cities purview

And how is this related to water conservation? It shouldn't be set against anything. If non-pot is viable, it should be encouraged. The non-pot system is separate from low water plants or other landscaping issues. It's only about the source and delivery of raw water.

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- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

**(D) Review of Application.**

Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
- (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Standards**

- 1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
- (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
1. relying upon a renewable and/or sustainable physical supply of water;
  2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
  3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

Agreed. This standard assumes the water provider is also reviewing. What is the public benefit of the City also doing so for ELCO and FCLWD?

Too late

Agreed. For master planned communities, this is an ODP issue. For smaller developments it should be a part of PDP because that's when the water provider already requires this information from the developer.

ELCO has a different standard

And that's part of our big fear here - multiple standards by different governments reviewing the same thing.

We had to do master plan estimates for the whole community early in the process, well before we had a final landscape plan. Master planned communities will build the backbone infrastructure up to a decade in advance. This timing doesn't work.

The potable water provider should simply require confirmation from the aug plan that the proposed non-pot system is in compliance with the aug plan.

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- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
1. if the non-potable water supply system includes treatment, that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful byproducts;
  2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
  2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

Again, this is undefined. If it's a metro district, the City shouldn't need to see the finance model to prove it can be built.

See above. Isn't that the aug plan's job already? Since those are often at-will the developer is already heavily incentivised to stay in compliance so they don't get kicked out.

Timing doesn't work at DCP if a decree is required.

**Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

If the City is going to get into this business, there has to be some appeal process. The stakes are so high for developers with these systems, especially in our case where there is a PBA explicitly stating we have to have a non-pot system. This code has no standards to weigh a system against, so a denial by the Director would essentially kill the project. There needs to be recourse.



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*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

What is this three-year requirement? It's not mentioned anywhere else in the code.

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# Water Adequacy Determination Review Land Use Code Update



- Water Adequacy Determination Review Program supports the goals of
  - City Plan
  - Housing Strategic Plan
  - Climate Action Plan
- Viewed as a tool kit to look at water affordability and support sustainable development patterns
- Neighborhood Livability & Social Health - 1.6 - Align land use regulations and review procedures to guide development consistent with City Plan.



- Water is a critical resource and its cost and availability impact new development
- Existing review process
- Need for a more robust process
  - More complicated development
  - Potential for creation of new water providers

Completely understand and agree with this one. It makes total sense and is needed.

However, where is the current breakdown in the current code and development process? it worked well at Bloom. This new code would significantly increase development complexity and if it is not addressing an identified problem, where is public benefit?



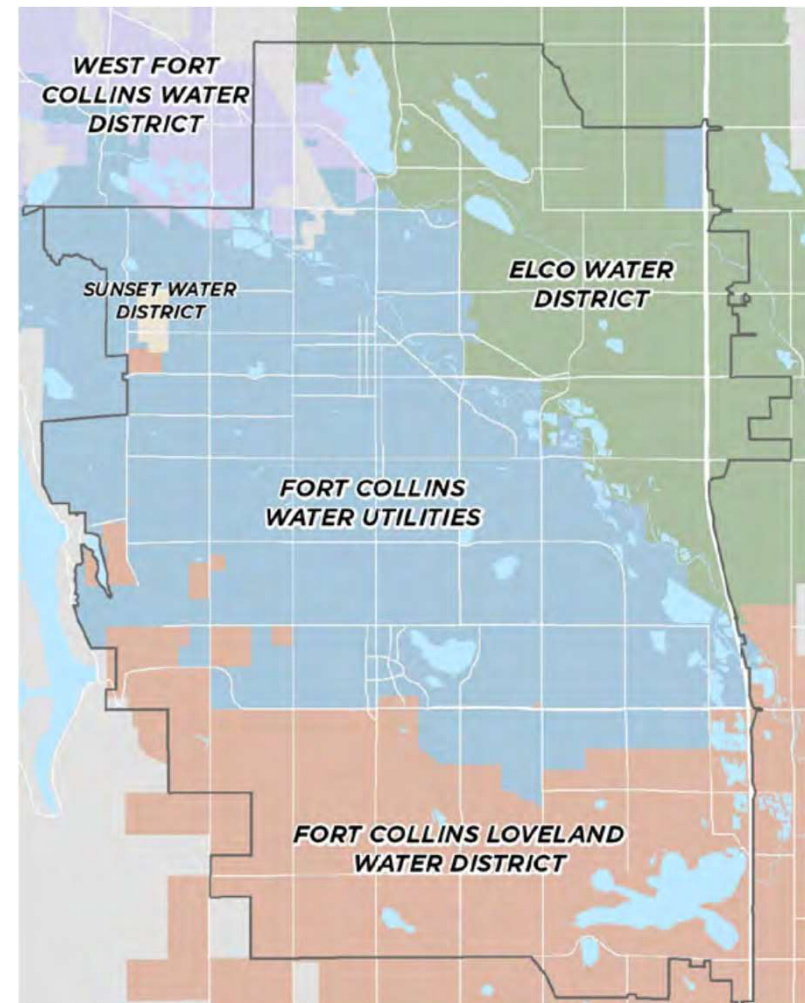


This review process is being proposed to further effectuate Section 29-20-301, et seq., C.R.S. which states:

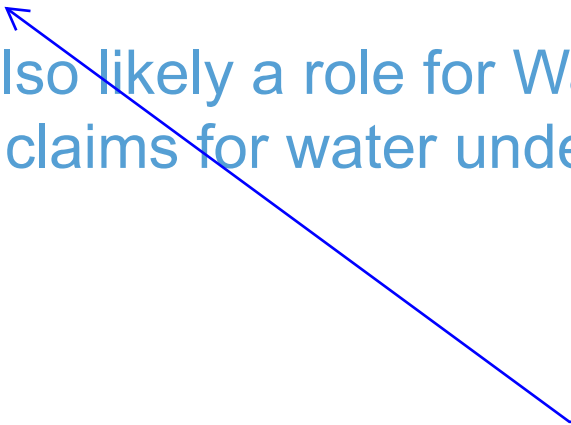
A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.



- Development occurs within the district boundaries of existing water providers
- Will Serve Letter issued by provider
  - Part of the building permit process



- Other Agency Review
  - Other agencies have the authority to review new providers
  - CDPHE
    - Requires public water systems demonstrate adequate capacity to construct, operate and manage the new public waterworks.
  - Water Court
    - There is also likely a role for Water Court to plan in validating claims for water under Colorado Law.



Avoiding Water Court and change cases is part of what makes non-pot systems so attractive. They also mean a much smaller dedication of raw water to the potable provider when that is required. Please avoid bringing in Water Court unless necessary.



## Proposed Evaluation Process – Existing Providers

7

- Keep similar process for existing providers
  - Will Serve Letter
- Consider opportunities to
  - Review proposed updates to water supply plans
  - Improve letters
  - Streamline process
  - Increase consistency between different providers

Why not same?

Agreed. Where is the breakdown that this level of code is needed for all projects?

I doubt this will streamline the process. How do ELCO and FCLWD feel about COFC reviewing their water supply plans

And is the developer then hamstrung if the provider and COFC disagree on some background information?



- Evaluation criteria for new providers
  - Water Quality
  - Quantity of Water
  - Dependability of Supply and Supplier
    - Supply Resiliency
    - System Redundancy
    - Maintenance and Outages
  - Availability of Supply
  - Financial Sustainability of Supplier
    - Capitalization
- Would apply to potable and non-potable supplies



- Timing
- The state statute leaves the determination timing during the development process up to the purview of the local jurisdiction however they limit making the determination to **only once** unless something materially changes.
- The draft code will identify the milestone in the development review process when this determination will be made.
- It will also identify what would trigger a reassessment.
- Approval
- The determination of adequacy would be made administratively subject to a review and recommendation by a qualified water consultant.

As stated above, this proposed point is way too late in the development process.

I didn't read that section above. What does trigger it?

The draft code only discusses the Director, not a consultant. When does the consultant come in to the process?





- The major milestones for this project are:
  - Draft Code Review
  - P&Z Recommendation
  - Council Consideration
  - Implementation
- If you'd like to learn more about this code update or provide comments, please contact Jenny Axmacher at [jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)

Item 1.

**THANK YOU!**





David Katz, Chair  
Julie Stackhouse, Vice Chair  
Michelle Haefele  
Adam Sass  
Ted Shepard  
Samantha Stegner  
York

Virtual Hearing  
City Council Chambers  
300 Laporte Avenue  
Fort Collins, Colorado

Cablecast on FCTV, Channel 14 on Connexion &  
Channels 14 & 881 on Comcast

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**Regular Hearing  
April 26, 2023**

**Chair Katz called the meeting to order at 6:00 p.m.**

**Roll Call:** Haefele, Sass, Shepard, Stackhouse, Stegner, York

**Absent:** Katz

**Staff Present:** Frickey, Sizemore, Claypool, Yatabe, Axmacher, Dial, Daly, Potyondy, and Manno

Vice Chair Stackhouse provided background on the Commission's role and what the audience could expect as to the order of business. She described the role of the commission, noting that members are volunteers appointed by City Council and that they are not staff and do not get paid. The Commission members review the analysis by staff, the applicants' presentations, and input from the public and make a recommendation of approval or not of approval to Council for their consideration. She noted that this is not a quasi-judicial hearing.

**Agenda Review**

None noted.

**Public Input on Items Not on the Hearing Agenda:**

None noted.

**Consent Agenda:**

None noted.

**Public Input on Consent Agenda:**

None noted.

Vice Chair Stackhouse did an overview of the process for the discussion item on the agenda.

### **Discussion Agenda:**

### **3. Water Adequacy Determination Code**

**Project Description:** This is a request for a recommendation to City Council regarding proposed Land Use Code changes to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

### **Recommendation: Approval of the proposed Land Use Code changes**

Secretary Manno reported that communications from stakeholders at Bloom, ELCO, FCLWD and Montava had been received and are included in the packet starting on page 54. And that a third correspondence from ELCO has been submitted but is not in the current published packet and that it will be included in a later version as well as a presentation from Montava.

### **Staff and Applicant Presentations**

Planner Axmacher gave a brief verbal/visual overview of this project.

### **Public Input (3 minutes per person)**

Steve Bushong, Law Firm of Bushong and Halleman, representative of Montava along with Dick Wolf of Leonard Rice Engineers. They were granted 15 minutes of speaking time and spoke to the groups concerns with the Water Adequacy Plan. They feel an augmentation plan would be efficient and that over appropriation of systems has happened over time. We keep finding new ways to develop water. For Montava they landed upon an augmentation plan. The system planned for Montava is not a unique system. Montava supports the staff and the Commission's effort to get this code in-place, but they want to make sure it is right, but not rushed. They are committed to being a partner in this process. The primary concern is that the code is giving the established potable water supply entities greater control and authority than they have, and these entities may not have the same incentives to approve new water supplies. Even when they may be more reliable or economical. Affordable housing requires affordable water. Please take the time to get it right!

Mike Scheid, General Manager for the ELCO Water District, supports the requirements stated 3.13.5(C)(5) of the City's proposed water adequacy rules.

Chris Pletcher, General Manager for the FCLWD, the District strongly supports 3.13.5(C)(5).

Max Moss, Montava, spoke generally about the Montava plan.

### **Staff Response**

Assistant City Attorney Potyondy spoke to provision, the requirement to exclude from the established service providers or gain consent. With the Water Adequacy Determination discussions, it was determined that this needed to be decided upon by City leadership. The staff recommendation is based in part on what could be discerned from previous City policies, respecting the boundaries of the neighboring water providers and in part based on City code language that Mr. Bushong referenced, Section 26-4. Under which the city agrees to not extend water or wastewater service into the service areas of duly established areas of districts. It is correct that the City can waive and not follow this provision if the districts are providing an unreasonable level of service to the property. Historically this has not been used. This could be incorporated into the code. It is primarily an issue that needs a

decision on now that there are being proposed alternative water supplies that could potentially disrupt well established service area boundaries amongst the water providers.

Planner Axmacher commented that with the timing issue it is the City's best interest to get the code updated and try to meet the deadline to be able to go back to the water court judge and tell him that we have made progress.

Attorney Yatabe asked when the proposed trial date is set. Attorney Potyondy responded that the trial date that will be set at the June 1<sup>st</sup> status conference will be set in late 2025. Detailed reports will need to start circulating 8-9 months beforehand. The risk is that the city and the roughly twenty-five others working on the case could be working on one version of the Montava augmentation plan only to have it change significantly based on what results from the water accuracy determination.

### **Commission Questions / Deliberation**

#### **Commission questions**

1. Autonomy of special districts with the State mandate from the municipality to make the adequacy determination.

Member Shepard asked, for clarification, the staff report contained references to not comply with those or are we preempted to use our home rule status? Attorney Yatabe responded that the water adequacy determination is really matter of State interest. He believes we are required to do the process up to this point. Also, since much of the area is provided for by Fort Collins Water Utilities. He feels what was worked on with staff is that there is some latitude within the statute. For example, the point at which that determination is made and some of the details of how water adequacy is determined is left to the local government entities.

2. To require exclusion or consent from the established potable water entities or other potable water entities to operate within their service area.

No questions.

3. Establish potable water and reviewing of resource information.

No questions.

4. Evaluation of water supplies to ensure that they will be adequate for our community members for the lifetime. Is there any additional information the city could require?

No questions.

General clarifying questions from Commission members.

Member York, 3.13 and 3.12 is going to be held for which? Planner Axmacher responded that this is new Section 3.13 and that 3.12 is being held for oil and gas.

Member York asked if there were other types of utilities that must provide a letter of adequacy or will serve letter in our GMA area? Planner Axmacher responded, none that she was aware of.

Member Shepard, Does the PUC come into play at all with what the Commission is discussing? Planner Axmacher is not aware of anything. Attorney Yatabe was also not aware the PUC plays into this as information otherwise. They do not play into it as our Fort Collins Water Utility. Water Engineer Daly responded that he agrees with Mr. Yatabe that he does not think that Public Commissions play a role with water providers here.

Member Shepard, reading the overall attempt, he is under the impression that there are two water providers in the city that do not have water treatment plants. If a new subdivision were to come in and those service areas, would they be able to meet the requirements of proposed 3.13, by not having their own water treatment plant? Planner

Axmacher responded that having a water treatment plant is not a requirement, but that we would want to make sure that the water was of an acceptable quality wherever they are getting it from.

Member Sass commented that our three requirements, the two letters and something else would be required for them to go ask wherever they are getting their water from. Is this where the letters come in that would be reviewed? Planner Axmacher responded yes, the districts two options; they can either provide copies of a water supply plans that meets the requirements that are outlined, or they can submit a letter from a professional engineer or supply expert that outlines the resources that they are using for their water. The second letter is the normal will serve letter. Once reason for the alternative is take into account that smaller districts may not have a water supply plan.

Member Shepard asked if it was anticipated that satisfying the requirements of the proposed 3.13 inside the Fort Collins Utilities Service territory would require the developer to rely on a consultant? Planner Axmacher responded, not within an established service provider area because they are already providing will serve letters now and the proposed process keeps this similar requirement.

Member Shepard asked if it was anticipated that the providers establish a standard will serve letter, or is it on a case-by-case application by application basis? Planner Axmacher responded that she believed the districts provide consistent letters within their own district, but not consistent across districts. This code is looking to create consistency and staff would be happy to work with the districts if a template is sought after and that would try to meet everyone's needs.

Section 3.13.(C)5(C) clarifying comments.

Vice Chair Stackhouse understands the basis for 3.13.5(C)(5). It is her understanding there are other situations in the State that are similar to what is being proposed by Montava. As part of this process, did we look at the language used by those other municipalities and is there a similar type of language that they use? Planner Axmacher responded that they could not find any other municipalities that have similar code language. The only place where they could find language to reference was La Plata County. Attorney Potyondy responded that he thought that it was clear that the proposed water supply that Montava is proposing to develop of relying on tributary ground water and using an augmentation plan as the legal vehicle is a fairly common situation throughout the State. What is a less common situation is the situation of a large-scale private water company within the boundaries of an existing water provider. Vice Chair Stackhouse commented that it was the letters that she was referring to and, in those situations, whether those municipalities have addressed or have a similar provision in their codes that address what the existing water provider has the ability to do.

Member Shepard asked to bring up the slide that had the picture of the boxelder watershed and the aquifer that would be tapped. He asked for more background on the 40% of what, the denominator, what is the numerator, etc. Mr. Wolf responded that what he was referring to is part of the historic irrigation on that property pumping from the wells that will serve the Montava development; that was the 40% reduction compared to what it was historically to what the future pumping demand will be for Montava. This information is to help show that this further supports the long-term sustainability aquifer, Montava's plan is not going to increase the draft on the aquifer, it will be reduced impact for future buildout. Member Shepard commented that this then gets to replenishment. Mr. Wolf: it is a reduction in the demand on the aquifer. Member Shepard asked how many acres the development owns. Mr. Bushong responded roughly 1,000 acres. The aquifer has historically been used for agriculture. Roughly 20 to 25,000-acre feet of pumping occurs for the aquifer.

Member Shepard commented that Mr. Moss made a comment "that the city took the water off the land." Was this a buy and dry, what happened there? Mr. Moss responded that Anheuser Busch has an agreement with the City in the form of a dedication to the City and that the City had an obligation to serve them that amount of water for 30 years and that 2,000 acre-feet could be used on this property. When they did the renewal of the agreement, they removed the right to use that water on the property by allocating it all to the plant. Clarification, the city removed.

Member Shepard asked where the ground water that will be pumped, be treated? Mr. Bushong responded that the Montava plan has two different well fields, one on Boxelder Creek and one on the west side of I-25. There will be a water treatment plant on the Montava property. The same ground water that has historically been used to irrigate the property that will then be used, treated, and delivered through in-house use only and then 95% of the water for



in-house use will come back through the Boxelder Sanitation District, the existing wastewater treatment plant for Boxelder.

Member Sass asked if there had been changes made to the draft. Planner Axmacher responded that she emailed the redlines at the same time the packet was released. Vice Chair Stackhouse clarified with Planner Axmacher that the Commission received two comment letters after the redlined language.

Planner Axmacher circled back regarding to the codes conversation commenting that she did pull up La Plate County's code and that they do have a provision, general requirement, "All proposed development within 400' of a watermain of a public water system or designated regional public water system shall connect to such system unless the applicable provider certifies in writing that the system lacks sufficient capacity to serve the proposed development or the connection would technically impracticable or the provider otherwise refuses to serve the proposed development".

Member York questioned the speed to which this proposal is moving, do we still have the same concern with the speed? Planner Axmacher responded that she did not know if she could answer the question other than that staff is doing the outreach that would have been completed given the same amount of time.

Member Shepard asked Mr. Pletcher if it was correct that he is asking for any land being removed that it is either consent by the district or it is removed. Mr. Pletcher responded that under Title 32 there is an exclusion process. A piece of property that would like to be excluded from the district must apply for the exclusion, give 30-day notice, and attend a public hearing, and then the Board evaluates and makes a decision. It is one in the same, it is a request and then an exclusion. Member Shepard asked if the decision of the Board appealable or is there an appeal process? Mr. Pletcher responded, not above the Board. Member Shepard asked if a decision could be appealed to the court? Mr. Pletcher responded that he would have to consult the attorneys.

Vice Chair Stackhouse asked Mr. Pletcher; when holding hearings and considering requests, how do you consider the cost factors in providing services, your cost versus what those that might want to find an alternative service? Mr. Pletcher responded that many of the costs that have been considered have been invested over the past 60 years to develop the infrastructure to make sure there are water tanks that are regional in nature to be able to serve that development. The costs are not just isolated to that parcel, they are the whole system. Vice Chair Stackhouse is seeking understanding for consumer cost effectiveness in an environment where you have an area that you serve, what incentives are there to be the most cost-effective provider? Mr. Pletcher responded that they have a long-term view, able to make investments in projects with a long view of the future based on the City's growth plans, anticipate where growth is happening and define the boundaries.

Member Shepard asked Mr. Pletcher at what point they put pipe into the ground? Mr. Pletcher responded that the philosophy is that growth pays its own way. The grided infrastructure to get water to the boundaries of the parcel is something that is planned decades in advance and size those pipes to make sure they can accommodate the planned use in that area and if they are not able to serve that land due to an exclusion, then they have invested in pipe size to get to that area of property that can never be used in that area. Member Shepard asked if a cost would be assigned to recover the sunk costs for anticipated service? Mr. Pletcher responded that they do evaluate the costs and them down to a number and compare it to the cost of maintaining that service versus the cost of being reimbursed for that service. Member Shepard asked if his or ELCO's district ever had an exclusion or de-annexation request come to the board? Mr. Pletcher responded that they have internally evaluated one. Mr. Scheid of ELCO responded that ELCO has not excluded much property and it is usually at the request of the property owner. ELCO has been working with the city to try to establish a service area boundary for over the last (+) years along Lemay. This is the only informal agreement and the only exclusion that can be thought of. A full analysis was not completed.

Member York asked about adding to areas as opposed to de-annexing, regarding special districts where some of them have spaces on the edge where they can grow, could the boundary be changed in this way? Vice Chair Stackhouse reframed the question to; Is there any land not covered currently by a water district? Mr. Pletcher responded not inside the city but next to the current boundaries for the current districts that are also included in the city. Member York wants to understand the infrastructure costs. Is it set now or is there potential for other changes that could happen? Mr. Pletcher responded that it is a geographic question if it were near those facilities that ELCO would have invested in the transmission line specifically, then potentially. But the sense is that any additional

property that could be included within ELCO service area that is also within the city is already in. Abutting GMAs are pretty well defined, like Timnath and Wellington unless they were to exclude from another municipality or water district and be included in ELCO. If this were the case, it would be on the fringe.

Member Shepard asked about ELCO's portfolio, if you do not have the portfolio and are relying on the developers to bring water rights, how do you know you can serve your whole territory? Mr. Pletcher responded that ELCO's policy has been that if you are going to add demand to the system, then you are going to add the supply required to meet that demand. Unlike the City of Fort Collins and Greeley, ELCO does not have the rich water right portfolios. It is subject to availability.

Member Haeefe asked if a new development proposing an augmentation scheme as their water supply, if that could be something that is added to ELCO's portfolio as a way of bringing a supply of water? Mr. Pletcher responded potentially, there is a lot to consider specifically regarding water quality, comingling, interconnects with sister districts in the sharing of transmission capacity. Member Haeefe commented that it would be fair to say that approving the Land Use Code changes before Montava in a general sense would then just be down to the specifics and this could be worked out case by case. Mr. Pletcher responded that there are a lot of questions that must be answered. Planner Axmacher responded that she did not believe it would preclude that.

### Deliberation

Vice Chair Stackhouse started with the two clear areas where a recommendation to Council is needed.

1. The speed at which the proposal is moving.
2. Provision 3.13.5(C)(5).

Member Sass asked about the language "at the director's discretion," and if the appeal process was still the same. Planner Axmacher clarified that language was added to remove these decisions from the normal appeal process. The reason is that these are very technical decisions in nature and that there is still an appeal process through the court. Staff feel this is a more appropriate decision-making body than City Council.

Member Shepard found that Attorney Potyondy's observation was persuasive in that there are multiple parties and strict rules with sharing information among the parties and that this can be time consuming. He agrees with Mr. Potyondy's response and the staff's position on the timing of this item. Member Sass respectfully disagrees. Member York is concerned with how fast this item has come through but knows this will become part of the Land Use Code and the Land Use Code is coming up for revision within the next few months. This gives us the opportunity to make corrections if needed. In looking at the redlines, they are not substantially different than they were before. Vice Chair Stackhouse confirmed with Member York that he is not concerned with the speed at which this item is proceeding. Member York confirmed.

Member Hafele feels that she can go either way on the speed. She commented that on one hand if the first version is given a soft release, it would get some expected testing and some revision. On the other hand, if you know that it is not quite right or are concerned that it is not quite right then, the speed seems too fast.

Member Stegner agrees with Member Hafele.

Vice Chair Stackhouse understands the pressure that city staff is under, but personally prefers more deliberation before implementing an item into code. It needs to be substantially ok. This leads to provision 3.13.5(C)(5). Hearing that there is similar language in code in another city, the more information is helpful. How do you keep cost effectiveness? What process is there when someone wants to opt out? She feels a little more time might be appropriate.

Member Sass commented that timing of when the adequacy determinations are made, he feels there should be more time spent understanding. Pulling these at the construction permit level seems late because developers are going to spend millions of dollars on building developments and then they may receive an adequacy determination that may not be in their favor. It could take months or years to get to the permit point.

Member York understands Member Sass's point, he believes that the city wants to be far enough in the process that the developers have already made sure that they have this in place so that they do not have to come back and that they should not move forward if they are not in the process of developing the supplies. Member Hafele agrees that this is the logical order in which someone would propose a development. Is water adequacy something that would be reviewed in a conceptual review stage? Member Sass responded, not according to the way it is outlined, it comes in the permitting level. Vice Chair Stackhouse commented that the commission would always encourage people to work with their water district starting at the conceptual review stage to understand the water resources they need for the proposed development. Member Shepard asked if the DCP is a deadline, can an applicant precede this at anytime in the process? Planner Axmacher responded that with the new redlines and updates from the prior code draft, this was addressed. This was happening too late in the process. Everything was moved up to final development plan or basic development review with the ability to request to defer later in the process. There is also an option for large scale development that has an approved ODP or PUD overlay to do the entire water adequacy review with the first phase of development at final plan. Member Shepard asked if there was a stand-alone water adequacy process. Planner Axmacher responded that it would need to go concurrently with final development or basic development plan, through the development review process. Member Shepard asked why this is such a concern, he agrees with Member Sass that no one is going to spend civil engineering and utilities plans if they do not have the water supply figured out. Member Axmacher commented that she believes it is helpful in make the decision to have the development review documents as part of the package as well as what has been approved. Member Hafele assumes that someone proposing a development, whether they are doing a formal determination with the city, has already completed their own internal determination and feels confident in what they bring. Is this a reasonable thing to assume? Planner Axmacher responded that she cannot speak for a developer, but she feels staff would agree. Planning Manager Frickey commented on the stand-alone water adequacy piece, this would be a difficult thing to evaluate. What plan would staff be reviewing against if there was a stand-alone request? It is a risk to the developer to have to go back during the PDP phase, staff cannot go back and ask for issue another water adequacy determination if the project is not substantially different.

Vice Chair Stackhouse asked Member Sass if this addressed his concerns. Member Sass feels this is fast.

Vice Chair Stackhouse recapped the three areas of deliberation.

1. Does the Commission believe that it is a condition that more time should be allocated to this for the sake of certainty that there is a shared understanding between all parties?
2. Section 3.13.5(C)(5), because the language is impactful to other applicants and whether the Commission is satisfied with the research that has been done on the language and understand the implication of it.
3. The timing of the adequacy determinations, to get to certainty that the language is well understood and shared.

Member Sass does not feel it is a bad time to have this, he just wants to make sure the Commission understands the ramifications of their decision.

Member Shepard is sympathetic to Member Sass's point. He is leaning toward the timing suggested by Attorney Potyondy. He commented that one area of conversation was the Commission recommend to City Council that they take extra time between first and second reading. This has been done before.

Attorney Potyondy spoke to the timing. The Water Court Judge has made clear that this is going to proceed forward irrespective of what the city does here. The judge indicated that he will set a trial at the next status conference and that the trial date will likely be in March of 2025. The major disclosure deadlines start coming due in June of 2024. The primary risk that the city articulated previously was that Montava, the city and the other parties could potentially be working on a version of the augmentation plan for over a year before it gets amended due to the water adequacy process. This could result in lost effort and time. Vice chair Stackhouse commented that she is not clear. If timing takes an additional month so that all parties have a chance to look at this carefully and fully appreciate the ramifications, this would be the right thing to do. Would a short amount of time make much of a difference? Attorney Potyondy responded that with respect to the risk of having the parallel court process and water adequacy regulations perhaps not, but at the same time, he is not looking forward to telling the judge it is not on track to get done when hoped. Member Sass asked for clarification on the June 1<sup>st</sup> date. Attorney Potyondy responded that progress will have been made certainly if it is approved on first reading and the second reading was pushed back more than the standard two-weeks. This would not be as big of a deal. Attorney Yatabe commented and made a

suggestion. With this currently set for May 16<sup>th</sup> Council first reading, the second reading would occur and the following regular meeting, June 6<sup>th</sup>. There is a possibility that the Planning and Zoning Commission could make a recommendation between the first and second reading. Staff at first reading could communicate to Council the substance of consternation over timing and the issues that the Commission is grappling with. Member Sass agrees and feels that they should not wait until the second reading. If the Commission understands that they send something to them stating that the Commission would like to have more review time to provide more constructive feedback. He would like further review time, another month.

Member Haeefe commented that the Commissions job on this evening is to send a recommendation to adopt or not adopt this code language. She does not see where the Commission has anything other than to request that the Council make space between the first and second reading for additional input.

Member York understands the timing concern. But feels it would be more of a deal if there was more that the Commission was concerned about with the language and there is only one section of code that is of concern. He feels the Commission could send it to Council stating the concerns and would like more people to weigh in on it. Member Sass commented that the Commission could go more into the specifics. He does not feel there is an affordable option. He would like to understand what other non-potable options are available that are not the traditional methods?

Vice Chair Stackhouse is hearing the general discomfort and a lot of process questions, but that there is a leaning toward making a recommendation that the City Council not adopt the code at this time and instead instruct for two things to occur:

1. Allowing parties additional time to review code language.
2. Instruct staff to continue studying section 3.13.5(C)(5) to weigh both the clear issues raised by water companies with the effects of benefits of competition and what that means and the implications of the language in the longer term.

Member Hafele commented that the Commission is making an assumption that everyone is concerned about 3.13.5(C)(5), and she is not necessarily concerned with this. This piece of code is intended to enable competing with other water sources. The situation right now precludes those. Planner Axmacher responded that with the current situation, we would not have anything to evaluate a potential new provider against in order to confirm the adequacy. Vice Chair Stackhouse spoke Section 26.4 the concept of "incapable providing a reasonable level of service." If the existing water company reviews a proposal, how do you define incapable of providing, she feels they are capable of providing. One may argue "provided at a cost-effective rate." She feels there may be very few situations where existing water companies would have any reason to approve these proposals and there is no appeal process. Member Sass asked what happens when a water district that is not the City of Fort Collins with their deep portfolio says you need x amount of dollars to provide water, what do we do as a city to stop this from happening if we do not put strong provisions in place to allow that developer who is going to build those homes to build an affordable home. We should not be considering water to be an unlimited resource.

Member York understands some of the concerns, but without concrete examples of something negative from this area, he sees it as a reasonable step forward to start with.

Member Stegner is back and forth, but the concern is timing. She is leaning toward more time.

Member Shepard appreciates Member Sass's perspective in the cost of not only the tap but bringing the raw water equivalent or the cash in lieu of real water right in ELCO, that inconsistency is maddening. City Plan did not envision \$80,000 taps for a single-family detached home. Member Sass commented that it is now more than that in our GMA. This is concerning.

Member Shepard asked if is a circular argument if a developer seeks to go to a special district to be removed and gets denied by the Board, what happens then? Planner Axmacher responded that staff would not be able to approve their private proposal as adequate.

Member Shepard heard in the testimony from the water districts that neither the Special District Boards have an appeal process which is a system of governance that perhaps served us well during the dust bowl but does not

serve us well in this day in age. Member York commented that he thought the appeal process was to go before the court. Attorney Yatabe responded that this is a legislative matter, different than a quasi-judicial matter where you are more bounded. Mr. Pletcher responded that during the course of the discussion, they verified that there is an appeal process above the district Board, it goes to the Board of County Commissioners. He was not aware of this prior to this hearing. This was new information for all involved. The Commission agreed that this is a critical piece of information. Member Sass agreed that it addressed some of his concerns, but are we sure? Planner Axmacher responded that staff attorneys advised that there would be an appeal process likely through court, this is different than what they were suspecting. Attorney Yatabe has not researched this topic, in fact it was not on his radar to be prepared with an answer and does not know if Attorney Potyondy has researched this issue.

Member Shepard asked that if knowing we have this information about an appeal process for the Special Districts, would this factor into any code revisions that staff would contemplate? Planner Axmacher responded that it provides a better understanding of the alternatives should a district not consent and that it might not be an absolute end to the process because it could be appealed and at that point it could be deemed adequate depending on the outcome of that appeal. Member Shepard asked if a Board of County Commissioner decision can be appealed in a 106 District Court. Attorney Yatabe responded that it could depend on the nature of the action. Rule 106 action is for a quasi-judicial decision, he is guessing this might be, but he has not dug into the specifics of the nature of the decision.

**Member Stackhouse made a motion that the Planning and Zoning Commission recommend that City Council not adopt the Proposed Water Adequacy Determination Amendment to the Land Use Code to:**

- **Provide additional time for stakeholders to fully review Code language, especially with respect to timing of a water adequacy determination.**
- **Instruct staff to continue study of Section 3.13.5(C)(5) of the proposed Code to fully understand the ramifications of the language, for both water providers and potential applicants, and especially with respect to the applicant's ability to appeal a determination of a water supply entity.**

**Member Shepard seconded.** Member Shepard thanked staff for their hard work under a deadline and that he learned about the appeal process. He supports the motion. Member York thanked everyone who came out and provided input. Member Sass thanked everyone who worked with this, he hopes that his concerns are not seen in a negative light and encourages people to participate. Member Haefele supports the motions because she agrees that having more time to review is important but feels these code changes help facilitate different innovative uses or sources of water while also still protecting entities that have some long-established investments in providing water. She does not have the concerns but agrees that water is the most confusing bit of the law. Vice Chair Stackhouse thanked everyone that came out. Knowing what it means is beneficial to everyone. We want to find the balance between preserving the investments that have been made by water companies but also creating the right economic incentives. **Vote: 6:0.**

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For more complete details on this hearing, please view our video recording located here:

<https://www.fcgov.com/fctv/video-archive.php?search=PLANNING%20ZONING>

### **Other Business**

None noted.

### **Adjournment**

Chair Katz moved to adjourn the P&Z Commission hearing. The meeting was adjourned at 8:18pm.

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*Minutes respectfully submitted by Shar Manno.*

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Minutes approved by a vote of the Commission on: June 15, 2023.

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Paul Sizemore, CDNS Director

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David Katz, Chair

DRAFT







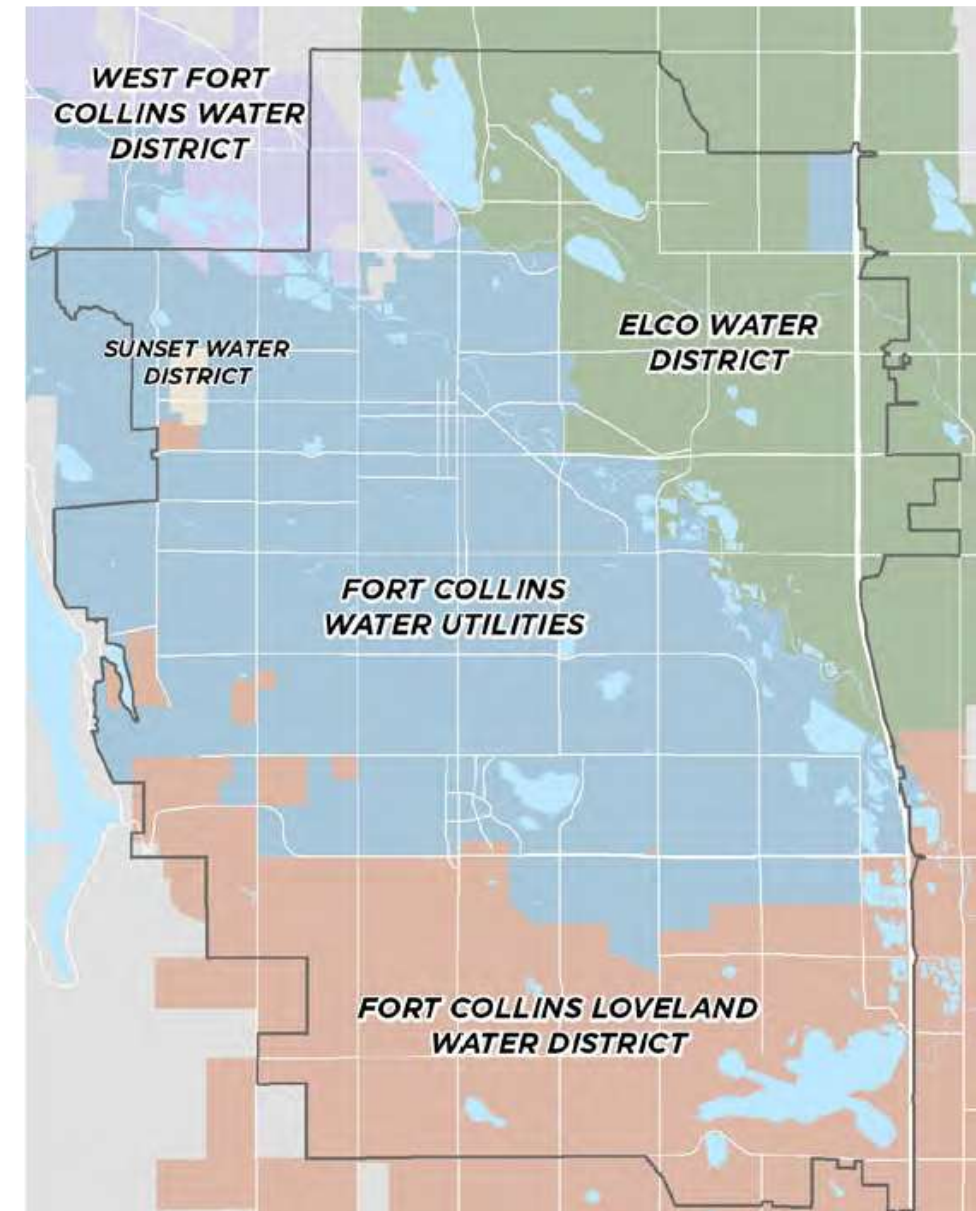
- Water Adequacy Determination Review Program supports the goals of
  - City Plan
  - Housing Strategic Plan
  - Climate Action Plan
- Viewed as a tool kit to look at water affordability and support sustainable development patterns
- Neighborhood Livability & Social Health - 1.6 - Align land use regulations and review procedures to guide development consistent with City Plan.

- Water is a critical resource and its cost and availability impact new development
- Existing review process
- Need for a more robust process
  - More complicated development
  - Potential for creation of new water providers

This review process is being proposed to further effectuate Section 29-20-301, et seq., C.R.S. which states:

A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.

- Development occurs within the district boundaries of existing water providers
- Will Serve Letter issued by provider
  - Part of the building permit process



- Other Agency Review
  - Other agencies have the authority to review new providers
  - CDPHE
    - Requires public water systems demonstrate adequate capacity to construct, operate and manage the new public waterworks.
  - Water Court
    - There is also likely a role for Water Court to plan in validating claims for water under Colorado Law.

- Water Adequacy is a new code division, 3.13 that builds off of existing adequate public facilities section 3.7.3.
- Creates 3 determination processes for different providers:
  - Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District
  - Other potable water supply entities such as new private water supplies or metro districts
  - Non-potable water supply entities, such as irrigation water supplied by metro districts

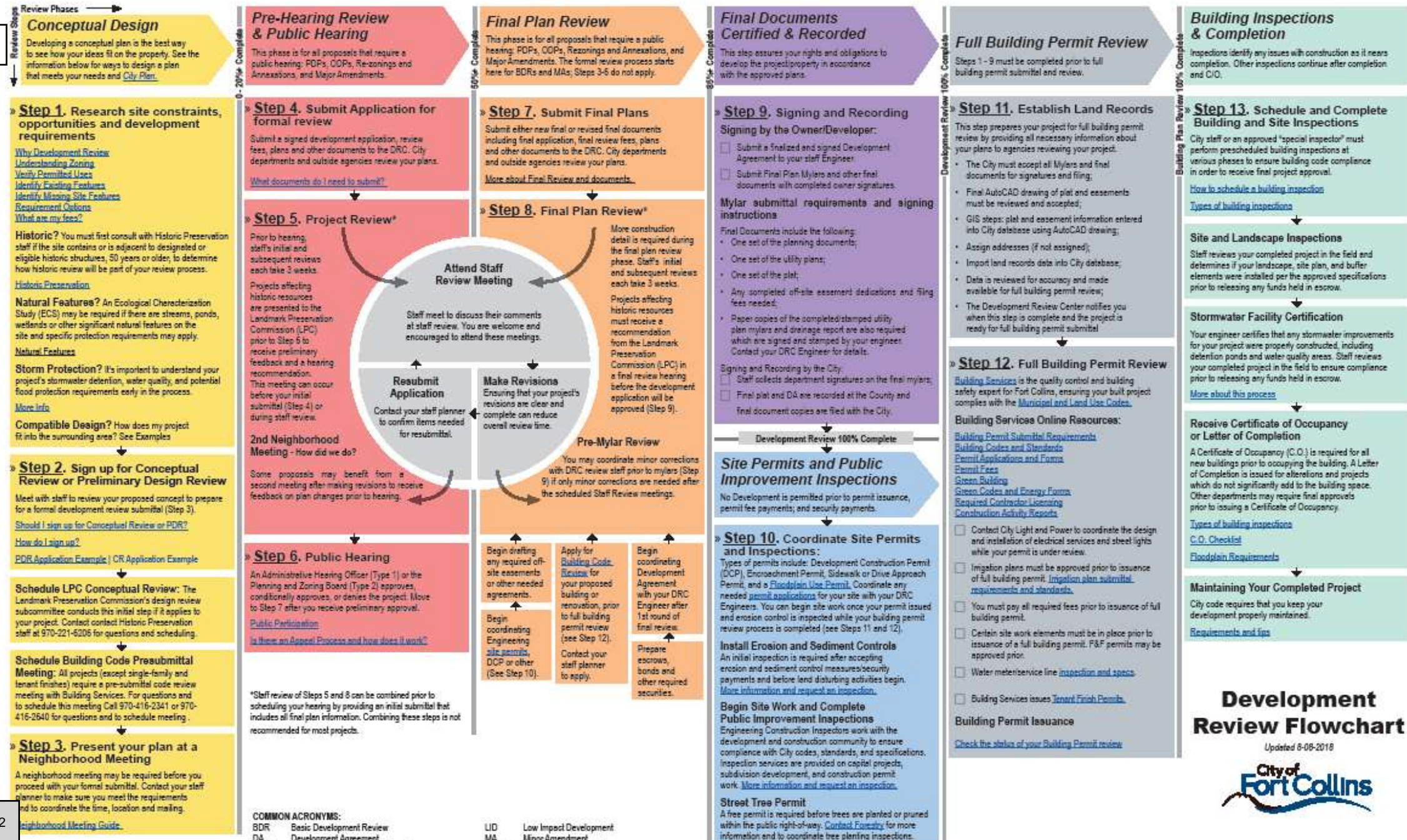
- Timing

- The state statute leaves the determination timing during the development process up to the purview of the local jurisdiction however they limit making the determination to **only once** unless something materially changes.
- The draft code identifies the milestone in the development review process when this determination will be made for each of the three different processes.

- Approval

- The determination of adequacy would be made administratively subject to a review and recommendation by a qualified water consultant.





## Development Review Flowchart

Updated 8-08-2018



- Keep similar process for existing providers
  - Will Serve Letter
  - Director can differ timing to building permit for review
  - Director as the decision maker
- Includes opportunities to
  - Review proposed updates to water supply plans by Council
  - Improve letters
  - Increase consistency between different providers



- Evaluation criteria for new providers
  - Water Quality
  - Quantity of Water
  - Dependability of Supply and Supplier
    - Supply Resiliency
    - System Redundancy
    - Maintenance and Outages
  - Availability of Supply
  - Financial Sustainability of Supplier
    - Capitalization

- Overall Standards Equivalent to Municipal Utility
  - Allows for a Modification of Standard for noncompliance
- Review Timing
  - At the time of Final Development Plan or Basic Development Review
  - Initial review anticipated to be done by a consultant
    - Cost agreement with applicant
- Final decision maker is CDNS Director

- Non-potable Entities
- Criteria:
  - Supply has enough quantity and;
  - Quality to support the associated uses such as irrigation for landscape.
- Review Timing
  - At the time of Development Construction Permit
  - Initial review anticipated to be done by a consultant
    - Cost agreement with applicant
- Final decision maker is CDNS Director

- Article Five, Division 5.1.2 – Definitions
- The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.
  - Adequate
  - Established Potable Water Supply Entities
  - Non-Potable Water
  - Non-Potable Water Supply
  - Other Potable Water Supply Entities
  - Potable Water
  - Water Adequacy Determination
  - Water supply entity
  - Water supply system

- Stakeholder Meetings:
  - Water Commission
  - West Fort Collins Water District
  - East Larimer County Water District
  - Fort Collins Loveland Water District
  - Hartford Homes/Bloom
  - HF2M/Montava
  - Polestar Gardens/Polestar Village
- Additional Feedback (no concerns):
  - Sunset Water District
  - Save the Poudre



- Requirement for new supply entities to petition out of existing water district or seek permission from existing water district.. There was both support and concern over this concept.
- The disparity between review criteria for established providers and new providers.
- The perception that the City was trying to regulate Special Districts through the review of a water supply plan or letter establishing the District's resources.
- A desire for more cooperation and consistency between all water suppliers.
- Concerns about duplicative review processes, especially for non-potable systems.
- Concerns over review costs
- Feedback that some metrics were vague.
- Feedback on the review timing proposed (FDP versus DCP) with a desire to complete the determination sooner.
- Feedback that there is a desire to be able to review new service for an entire development and then true up each phase at the time of final plan or BDR.

Concerns on tight review timing for code update.

Staff is confident in the structure of the adequacy determination approach but incorporated feedback since the P&Z hearing that:

- Increased clarity
- Increased review efficiency
- Reduced duplication of efforts
- Provided additional review timing options
- Incorporated technical suggestions

Staff has identified 3 Decision Points for Council

1. Section 3.13.3 (A) Determination Timing
2. Section 3.13.4 (A) (1) Established Provider Review
3. Section 3.13.5(C)(5)(c) New Providers in Existing Service Areas

Alternatives outlined in subsequent slides.

In all three cases, staff is recommending to adopt the code as proposed and to not make any changes.

## Decision Point 1 - Section 3.13.3 (A) Determination Timing

| Entity      | Current         | Proposed | Deferred              |
|-------------|-----------------|----------|-----------------------|
| Established | Building Permit | FDP/BDR  | Building Permit       |
| Other (New) | N/A             | FDP/BDR  | DCP<br>All in Phase 1 |
| Non-Pot     | N/A             | FDP/BDR  | DCP                   |

### Alternatives:

- Move Earlier in Dev Review Process
- Move Later in Dev Review Process

Staff is recommending to adopt the code as proposed

Alternative 1 - Move the determination timing for any or all the three entity types to earlier in the development review process such as at the project development plan.

- Pros: Provide assurance that water supply issues are being addressed earlier in the development review process so that unrealistic projects don't waste resources.
- Cons: Projects can change, potentially significantly, as they go through the development process and those impacts could change the amount of water the development ultimately needs to be successful. For example, a commercial space could change from a retail store to a restaurant or brew pub, all having different water supply requirements.

Alternative 2 - Move the determination timing for any or all the three entity types to later in the development review process such as at building permit.

- Pros: Gives Staff the most accurate and detailed information on the water supply requirements to make the determination.
- Cons: Allows projects with unrealistic water supply proposals to move through the development review process to the point of having created detailed construction drawings and incurred those design expenses.

## Section 3.13.4 (A) (1) Established Provider Review

Requires Established Providers to provide a letter or water supply plan to Council outlining their water resources prior to submitting will serve letters.

Established Providers have indicated concerns with this approach

### Alternatives:

- Remove the requirement
- Increase the level of required review

Staff is recommending to adopt the code as proposed



Alternative 1 - Remove this requirement from both subsections (a) and (b).

- Pros: Allows established potable water supply entities to continue submitting will serve letters, as they have previously done with minimal changes to the current process.
- Cons: There is a missed opportunity for education for both parties on how these established potable water supply entities provide services within the City and how these services impact the community.

Alternative 2 - Require a greater level of review for these documents such as a presentation before Council, or another City Board or Commission, during a meeting or work session.

- Pros: Allows for greater dialogue and understanding on how water resources are provided to all parts of the Fort Collins community.
- Cons: Established potable water supply entities would likely feel that this infringes on their quasi-governmental entity's rights to serve their established purpose, and could create a misunderstanding that the City has some oversight over the districts, when the City does not.

## Section 3.13.5(C)(5)(c) New Providers in Existing Service Areas

- Provision requires new (other) providers to exclude from established providers service area or get their consent to operate.
- Potential new providers have indicated significant concerns with this approach.
- Established providers have indicated substantial support for the approach.

### Alternatives:

- Remove the requirement
- Alter the code requirement

Staff is recommending to adopt the code as proposed

General requirement. All proposed development within four hundred (400) feet of a water main of a public water system or designated regional public water system shall connect to such system, unless the applicable provider certifies, in writing, that the system lacks sufficient capacity to serve the proposed development; or the connection would be technically impracticable; or the provider otherwise refuses to serve the proposed development.

Alternative 1 - Remove this requirement from the proposed code.

○ Pros:

- Removes the City from the middle of the issue of whether privately-owned potable water supply entities should also be excluded / get consent from established potable water supply entities.
- Potentially allows new, privately-owned water supply entities to innovate, provide cheaper water supply alternatives, and supply water in a manner that makes denser development in accordance with the vision of City Plan possible where it might not otherwise be economically feasible.

## Alternative 1 - Remove this requirement from the proposed code.

### Cons:

- From the perspective of the established potable water providers, including the City, removing this requirement would allow the potential for new, privately-owned potable water supply entities to operate within the established potable water provider's service area. Various policy concerns are raised by the prospect of small potable water supply entities in the GMA.
- This more easily allows additional water providers in the Grown Management Area (GMA), adding additional complexity for water supply, including regional coordination on various issues, including drought response, and fees and rates. That some new potable water supply entities could be small and privately-owned, thus perhaps lacking economies of scale and elected representation adds potential additional considerations.
- This could harm the established potable water supply providers and their ratepayers by eliminating service in areas where service was already planned for and where expenses such as infrastructure or other less obvious costs such as treatment capacity have already been accrued by the established potable water supply entity. In some instances, bonds may have been issued based, in part, on this service area. This could affect future rates and fees.
- Offers less certainty and transparency regarding where and when privately-owned water supply entities can operate.

## Alternative 2 - Alter the code requirement.

- Pros: Staff was unable to find a reasonable compromise that would satisfy all parties with the concerns of this proposed code provision, however staff would be open to exploring alternative language if there is a desire to do so.
- Cons: The proposed language is based on an existing municipal code provision (Sec. 26-4) that gives general policy direction with the respect to the City respecting the service area boundaries of established potable water supply entities. The current language achieves the desired purpose as written.

| Decision                                   | Alternative 1          | Alternative 2         | Staff Recommendation          |
|--------------------------------------------|------------------------|-----------------------|-------------------------------|
| 1. Determination Timing                    | Earlier in the process | Later in the process  | FDP/BDR as currently proposed |
| 2. Established Provider Review             | Remove requirement     | Increase requirement  | Adopt as currently proposed   |
| 3. New Providers in Existing Service Areas | Remove requirement     | Alter the requirement | Adopt as currently proposed   |



Planning and Zoning Commission recommends that Council not adopt the proposed code to allow for

- additional time to consider the impacts of the timing of the determination
- staff to further study section 3.13.5C(5) to fully understand implications for both applicants and supplier, particularly for an applicant's ability to appeal the decision of a district

Staff recommends the Council approve the proposed Land Use Code changes.