

## **AGENDA ITEM SUMMARY**

**October 19, 2021**

City Council

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### **STAFF**

Kelly Smith, Senior City Planner  
Brad Yatabe, Legal

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### **SUBJECT**

Items Related to the Establishment of 1041 Regulations.

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### **EXECUTIVE SUMMARY**

- A. Public Hearing and Second Reading of Ordinance No. 122, 2021, Designating Certain Activities as Matters of State Interest and Imposing a Moratorium on the Conduct of Such Activities Until City Council Makes a Final Determination Regarding the Adoption of Guidelines for the Administration of Such Activities.
- B. Second Reading of Ordinance No. 123, 2021, Appropriating Prior Year Reserves to Support Completion of the 1041 Regulations Project.

These Ordinances, adopted on First Reading on September 21, 2021, by a vote of 5-1 (Nay: Peel), initiate and appropriate funds for the development of 1041 Regulations by holding a public hearing to designate activities of statewide interest, and to appropriate funding to support project completion. The ordinance designates the following activities:

- 1. Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems; and
- 2. Site selection and construction of arterial highways and interchanges and collector highways.

Specific reference to a moratorium until Council adopts regulations to administer the above two activities is included in the designation ordinance.

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### **STAFF RECOMMENDATION**

Staff recommends adopting both ordinances with the recommended changes to the parameters of exemptions to the moratorium and the addition of a quasi-judicial exemption process (Option 1 below).

Council may wish to consider three options provided in this AIS that provide variations in timing of approving the designation and moratorium ordinance.

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### **BACKGROUND / DISCUSSION**

At the May 4, 2021, Council meeting, Councilmembers requested staff present information related to 1041 regulations. During the meeting, Councilmembers adopted Resolution 2021-055, which directed staff to evaluate the feasibility for adopting 1041 regulations.

At the July 27, 2021, work session, staff returned to Council and presented two options for developing 1041 regulations: Option 1 focused on immediate development pressure (likely to occur within 10 years) and included two activities of state interest; Option 2 focused on immediate and potential future development pressure (likely to occur within 10-20+ years) and included five activities of state interest. Staff also requested

a mid-cycle appropriation to assist with project completion. While Councilmembers were generally supportive of the project and an appropriation, they were split between Option 1 and Option 2. Council requested staff return during a regular meeting to present a third option, present a proposal to designate activities of state interest, and provide opportunity for discussion, public input and a vote.

On September 21, 2021, staff presented a third option along with two ordinances for consideration. The first ordinance initially designates the activities listed in Option 1 through a formal public hearing process; the second ordinance approves a mid-cycle appropriation to support project completion. Councilmembers selected Option 1 and adopted both ordinances with the condition that staff:

1. Clarify parameters of exemptions to the moratorium.
2. Perform additional engagement with water and sanitation districts to identify specific projects that could be impacted by the moratorium.
3. Further develop the procedural requirements and review criteria for the quasi-judicial hearing that exempts projects from the moratorium.

The following describes what staff learned during this process and the changes made to the designation ordinance.

### MORATORIUM INTENT AND OPTIONS

Staff acknowledges councilmembers have varying perspectives on imposing a moratorium as part of developing regulations. To provide additional clarity on risks and impacts to development, three project approaches with different moratorium timelines have been prepared for Council discussion. When considering the options, it is important to keep in mind:

- A moratorium is imposed pursuant to the Colorado Revised Statutes at the time the City designates activities or areas of statewide interest until regulations for administering the designated activities or areas are adopted by Council.
  - The City, after conducting a public hearing, can designate activities or areas any time during City staff's work to draft regulations. A moratorium on the activities or areas would be imposed from the designation until Council adopts regulations.
1. **Option 1: Designate Now.** Councilmembers would adopt the designation ordinance at Second Reading. The moratorium would take effect immediately and be lifted once regulations are adopted. The duration of the moratorium would last approximately 1 year.
  2. **Option 2: Designate at Draft.** Councilmembers would postpone adopting the designation ordinance to June 7, 2022. Staff would begin performing broad engagement and drafting regulations. Meanwhile, City-issued permits and easements on City-owned properties would be issued, and project applications processed through SPAR. Once a draft is completed, staff would return to Council in early May, 2022 to facilitate a work session discussion. At that time, Council would discuss whether a designation ordinance would be supported. If supported, Council would adopt the designation ordinance on June 7, 2022, and the moratorium would last approximately 6 months.
  3. **Option 3: Designate at Adoption: No Moratorium.** Councilmembers would postpone the designation ordinance indefinitely. Staff would perform broad engagement and begin developing regulations. At the time of adopting regulations, Council would designate the activities of state interest. This would not require a moratorium.

OPTION	CONSIDERATIONS
Option 1: Designate Now	<ul style="list-style-type: none"> <li>• Longest Moratorium</li> <li>• Highest certainty to City until regulations are adopted</li> <li>• Lowest certainty to developers, water providers and regional jurisdictions</li> <li>• Uncertainty could bring potential delays to planned projects at a regional scale</li> <li>• Consistent with First Reading</li> </ul>
Option 2: Designate at Draft	<ul style="list-style-type: none"> <li>• Known regulatory framework for increased certainty</li> <li>• Opportunity to further engage service providers, community, boards/commissions, etc.</li> <li>• Cuts moratorium duration in half</li> <li>• Allows projects to move forward with permitting, easements and SPAR process for 6 months</li> </ul>
Option 3: Designate at Adoption: No Moratorium	<ul style="list-style-type: none"> <li>• Lowest certainty to City until regulations are adopted</li> <li>• Highest certainty to developers, water providers and regional jurisdictions</li> <li>• Allows projects to move forward with permitting and SPAR process until regulations are adopted</li> </ul>

#### MORATORIUM APPLICABILITY AND RECOMMENDED CHANGES

If Councilmembers adopt the designation ordinance at Second Reading, the moratorium would take effect immediately and conclude at the time regulations are adopted. The moratorium is designed to apply to projects that would be likely regulated through 1041 regulations, as outlined in the Executive Summary above. To provide greater clarity and alignment with the intent of 1041 regulations, the proposed moratorium includes specific design parameters that restrict the moratorium to projects that would likely warrant 1041 review.

The design parameters used to distinguish projects subject to the moratorium are intended to serve as a proxy for a project's potential to result in significant adverse impacts. Two design parameters were initially explored and are used in other jurisdictions' 1041 regulations: 1) pipe size and 2) easement width.

The parameter currently referenced in the designation ordinance is pipe size and was selected based on design standards the City uses for transmission lines. Upon additional engagement with providers and review of several proposed projects, pipe size proved to be a less reliable indicator of potential impacts. Pipe sizes varied based on service provider and planned development density whereas easement width proved to be more consistent. Additionally, easement width accounts for the spatial needs required for continued operations and maintenance, a clearer indicator of potential temporary and permanent impacts.

Staff recommends Council *change* the design parameters from pipe size to easement width in the designation ordinance. The table below outlines the specific recommended changes. **This change would require an amendment to Ordinance No. 122 at the time of adoption on Second Reading.**

Eliminated Parameters in First Reading	New Parameters Staff Recommends Council Consider at Second Reading
Water Projects: Pipe size greater than 12"	Water and sanitation projects requiring greater than 30-foot easement width
Sewer Projects: Pipe size greater than 15"	Water and sanitation projects requiring easements greater than 20 feet that are adjacent to existing easements
<b>Unchanged Parameters</b>	
Projects subject to SPAR process	
New or major realignments of highways and interchanges	
Does not provide direct service to a proposed development	

Does not include activities related to maintaining, repairing and/or replacing equipment provided it does not alter the location of the existing facility beyond the existing easement or right-of-way

## EXEMPTION PROCESS AND REVIEW CRITERIA

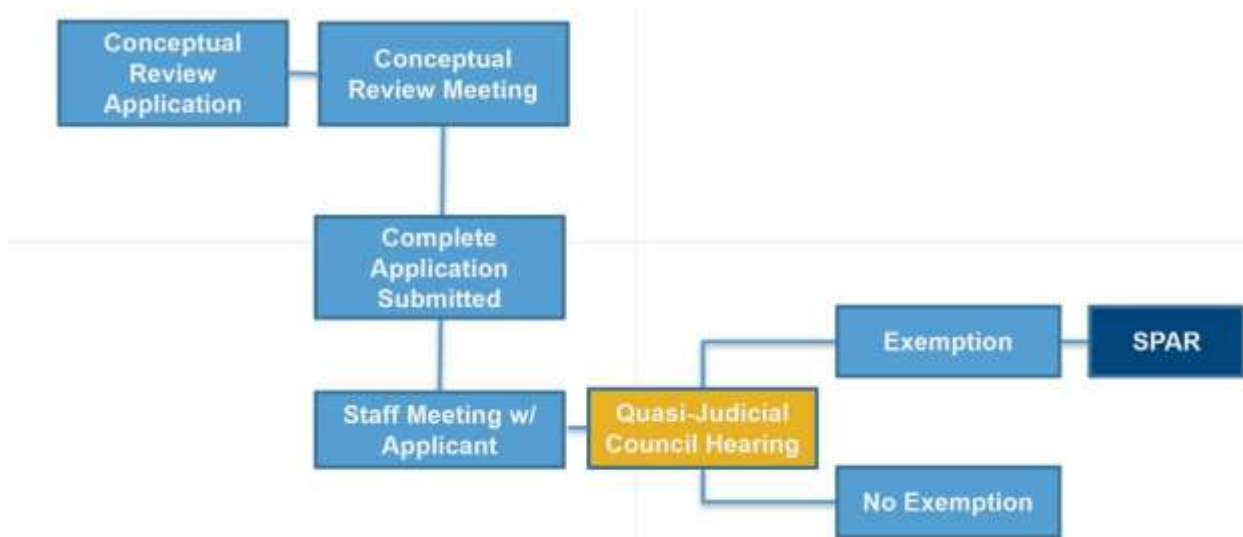
The designation ordinance contains specific design parameters to clarify the applicability of the moratorium, as summarized above. In addition, the proposed moratorium ordinance includes a procedure where an applicant can apply to Council for an exemption from the moratorium through a quasi-judicial hearing. If an exemption is denied, the project would be subject to the moratorium. Likewise, if an exemption is approved the project would proceed through the Site Plan Advisory Review (SPAR) process.

The intent of the quasi-judicial hearing is to provide an expedited decision to exempt projects subject to the moratorium. An exemption does not guarantee project approval by the Planning and Zoning Commission, rather it provides a path forward.

### Review Process

The quasi-judicial hearing process starts with the submittal of a Conceptual Review application, which is required for nearly all development projects, including projects subject to SPAR. Conceptual Review application requirements are minimal and intended to convey project intent. After an application is submitted, the applicant will meet with various City departments to understand City submittal requirements for a more detailed project application for the quasi-judicial hearing.

The application requirements for the quasi-judicial hearing may be less intensive than the SPAR application yet provide enough information for staff to make a recommendation to Council. This way applicants will not invest significant time and resources into a process that will not guarantee an exemption. Once a complete application for exemption is submitted, the applicant will meet with staff to review the hearing procedures and address potential concerns. The City Clerk is required to schedule the project for Council no later than 60 days from receiving the application to ensure a timely decision, however, Council may extend the 60-day period by motion or resolution if needed.



Should a project be exempted, it can proceed through the SPAR process. The applicant will be required to hold a neighborhood meeting, submit a complete SPAR application, and present to the Planning and Zoning Commission for review and approval. Note, SPAR is advisory in scope therefore the Planning and Zoning Commission's decision can be overturned by the applicant's governing board by a 2/3 majority vote.

## Exemption Review Criteria

The criteria Council will use to evaluate projects for exemption are consistent with the Modification of Standards in the Land Use Code for development projects, and structured around two themes:

1. The potential for the project to result in significant adverse impacts that would otherwise be mitigated through a binding review process; or
2. The project meaningfully addresses an important community need and delaying the project until the moratorium is terminated would result in substantial hardship to the community.

In other words, the review criteria will provide Council discretion to weigh the impacts against the benefits of a particular project.

## ENGAGEMENT: PROJECT IMPACTS

To understand which specific projects would be impacted by the moratorium and to provide additional clarity, staff engaged water districts, sanitation districts, Colorado Department of Transportation (CDOT), City Utilities, Poudre Fire Authority, developers, Colorado State University and Poudre School District. During this engagement, staff was able to clarify many projects that would not be impacted by the moratorium and can proceed on schedule without delay.

Through these discussions, there were two projects identified that potentially could be impacted by the moratorium: Northern Integrated Supply Project (NISP); and North Weld County (NWCWD) and East Larimer County (ELCO) Water Districts Water Transmission Pipeline (NEWT 3 Pipeline). Both projects are tentatively planned for construction sometime in 2023 however they are awaiting easement dedications, approvals and permits from multiple private landowners, jurisdictions, and agencies.

Because NISP and NEWT 3 are not shovel-ready, it is unclear the tangible impacts a moratorium could impose. What has become clear is the uncertainty felt among developers and water providers about the unknowns related to the regulations, such as application requirements and timeline to review and approve projects. For ELCO and NWCWD, NEWT 3 will provide the transmission capacity for water demand to future development within the districts. Without assurances that NEWT 3 can be approved, water providers are hesitant to refine construction documents, secure easements and construct smaller infrastructure projects until regulations are adopted.

It should be noted that in March 2021, Larimer County imposed a 9-month moratorium on all 1041 permit applications while the county updates its regulations. County regulations are slated for adoption by December 2021. NEWT 3 is subject to the county's moratorium and 1041 review process. The moratorium and updates so far have not impacted private development, the construction of smaller water projects or new taps from being issued by ELCO or NWCWD. It is unclear if or how the county's updated regulations will impact the NEWT 3 pipeline project in terms of submittal requirements and review timeline.

Below is a table that illustrates the outstanding external factors for NISP and NEWT 3 that could influence project schedules (Unknown Variables) and the ways the moratorium would impact projects (Known Variables). The table also highlights when each agency was consulted to provide transparency to the engagement process.

ENTITY	DATES ENGAGED	IMPACTED PROJECTS	UNKNOWN VARIABLES	KNOWN VARIABLES
Northern Water	Ongoing w/ multiple staff	<b>Northern Integrated Supply Project (NISP)</b> <ul style="list-style-type: none"> <li>• 3 mi pipeline and diversion structure</li> </ul>	<ul style="list-style-type: none"> <li>• Unknown construction timing and sequencing</li> <li>• Still waiting for ROD from Corps</li> <li>• Not started securing easements in FTC</li> <li>• Not started securing</li> </ul>	<ul style="list-style-type: none"> <li>• Goal: break ground 2023</li> <li>• 10 months to construct FTC infrastructure</li> <li>• Can begin securing easements on private property</li> <li>• Moratorium would prevent</li> </ul>

ENTITY	DATES ENGAGED	IMPACTED PROJECTS	UNKNOWN VARIABLES	KNOWN VARIABLES
		<ul style="list-style-type: none"> <li>60' easement</li> <li>32"-36" dia pipe</li> </ul> Crosses several City-owned Natural Areas	easements on City-owned land	securing easements on City-owned land <ul style="list-style-type: none"> <li>Moratorium would prevent City issued permits</li> <li>Obtained 1041 Permit from Larimer County</li> </ul>
ELCO/ NWWD	July 9 Sept 20 Oct 4 Oct 11	<b>NEWT 3 Pipeline</b> <ul style="list-style-type: none"> <li>2 mi pipeline</li> <li>50' easement</li> <li>42" dia pipe</li> <li>Does NOT cross City-owned properties</li> </ul>	<ul style="list-style-type: none"> <li>Still planning and designing</li> <li>Impacts of Larimer County 1041 regs (in drafting)</li> <li>Need Weld County approval</li> <li>Need Larimer County 1041 permit</li> <li>Need easements</li> <li>Need approvals from SHPO</li> <li>Need approvals from the Corps</li> <li>New City regulations may impact design</li> <li>Uncertainty for development and bond repayment schedules</li> </ul>	<ul style="list-style-type: none"> <li>Goal: break ground 2023</li> <li>10 months to construct</li> <li>Uncertainty for water providers</li> <li>Impacts approval sequencing</li> <li>Can work with the Corps on potential wetlands impacts (Boxelder Creek)</li> <li>Can secure easements on private property</li> <li>Can develop detailed construction drawings</li> <li>Moratorium would prevent City-issued permits</li> </ul>
FCLWD	July 9 Oct 1 Oct 5 Oct 6	None		
FTC Utilities	Ongoing	None		
Boxelder Sanitation	July 9 Oct 4 Oct 11	None		
Cherry Hills Sanitation	July 9 Oct 4	None		
Soldier Canyon Sanitation	Oct 4	None		
CDOT	July 7 Oct 4	None		
PFA	Oct 1 Oct 4	None		
Other Project Impacts		Regional projects	<ul style="list-style-type: none"> <li>Uncertainty among water providers may hold up development projects in other jurisdictions</li> </ul>	<ul style="list-style-type: none"> <li>North Weld Water District placed a hold on taps for new construction until more is known in FTC</li> </ul>

## PROJECT TIMELINE

Staff anticipates the development of 1041 regulations to require robust engagement and should take approximately one year to complete. During initial engagement with water and sanitation districts, representatives indicated the need for ample time (1-2 months) for District Boards to review and comment on draft regulations. This request is reflected in the proposed timeline. **(Attachment 2)**

## CITY FINANCIAL IMPACTS

Staff is seeking a mid-cycle appropriation from General Fund reserves to complete the project. Should the scope expand beyond the activities being designated through this Ordinance, the appropriation will increase in proportion to the expanded scope.

**BOARD / COMMISSION RECOMMENDATION**

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Several Boards and Commissions were engaged prior to the September 21 public hearing. The table below captures high level comments expressed by Boards and Commissions.

BOARD/ COMMISSION	OPTION 1	OPTION 2	OPTION 3	COMMENTS/ CONCERNS
Planning and Zoning Commission			X	
Water Commission				No consensus at the moment; unfamiliar with 1041 Regulations
LCSB			X	
NRAB			X	

**PUBLIC OUTREACH**

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Additional public outreach will be performed as regulations are being developed.

**ATTACHMENTS**

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1. First Reading Agenda Item Summary, September 21, 2021 (w/o attachments) (PDF)
2. Project Timeline (PDF)
3. Letters to Council (PDF)
4. Work Session Summary (PDF)
5. Water Commission Minutes (PDF)
6. Natural Resources Advisory Board Minutes (PDF)
7. Powerpoint Presentation (PDF)



## AGENDA ITEM SUMMARY

City Council

September 21, 2021

### STAFF

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Kelly Smith, Senior City Planner  
Brad Yatabe, Legal

### SUBJECT

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Items Related to the Establishment of 1041 Regulations.

### EXECUTIVE SUMMARY

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- A. Public Hearing and First Reading of Ordinance No. 122, 2021, Designating Certain Activities as Matters of State Interest and Imposing a Moratorium on the Conduct of Such Activities Until City Council Makes a Final Determination Regarding the Adoption of Guidelines for the Administration of Such Activities.
- B. First Reading of Ordinance No. 123, 2021, Appropriating Prior Year Reserves to Support Completion of the 1041 Regulations Project.

The purpose of this item is to initiate the development of 1041 Regulations by holding a public hearing to designate activities of statewide interest, and to appropriate funding to support project completion. The designation ordinance designates the following activities:

1. Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems; and
2. Site selection and construction of arterial highways and interchanges and collector highways.

Specific reference to a moratorium is included in the designation ordinance until Council adopts regulations to administer the above two activities. Staff is also seeking further Council direction on what additional activities or areas, if any, should be included in the project. Should the scope expand beyond the two activities designated, the appropriation will increase in proportion to the expanded scope. Staff would return to Council later to hold a public hearing for Council to consider designating the additional activities or areas of state interest and adopting regulations.

### STAFF RECOMMENDATION

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Staff recommends adoption of both Ordinances on First Reading.

### BACKGROUND / DISCUSSION

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

The purpose of 1041 powers is to give local governments control over particular development projects occurring within their jurisdiction even when the project has statewide impacts. The term "1041" refers to the number of the bill, House Bill 74-1041, that created the 1041 powers in 1974 and the statutes regarding 1041 powers are also referred to as the *Areas and Activities of State Interest Act* set forth at Colorado Revised Statutes ("C.R.S.") Section 24-65.1-101 et seq. To exercise 1041 powers, a local government must identify the areas or activities



of state interest and adopt guidelines for the administration of the designated areas or activities pursuant to statutory procedures and limitations.

Staff returned to Council on July 27, 2021, which concluded that adopting 1041 regulations would help achieve the City's policy goals, particularly for large-scale projects currently regulated under the Site Plan Advisory Review (SPAR) process. Staff also concluded the process for developing 1041 regulations would require significant staff time and require an appropriation for consulting services to support project completion.

Two options for developing 1041 regulations were discussed: Option 1 focused on immediate development pressure (likely to occur within 10 years) and included two activities of state interest; Option 2 focused on immediate and potential future development pressure (likely to occur within 10-20+ years) and included five activities of state interest.

While Councilmembers were overwhelmingly supportive of the project and an appropriation, they were split in their preference for Option 1 and Option 2. Council requested staff return during a regular meeting to present a third option, and provide opportunity for discussion, public input and a vote. The regular meeting has been combined with a public hearing that initiates the process for designating the two activities presented in Option 1, as development pressure is imminent under those activities. A second public hearing will be scheduled later for additional activities or areas should more be added to the project scope.

### **PUBLIC HEARING and ORDINANCE**

The public hearing provides Council with the opportunity to designate the following activities to be of state interest and to impose a moratorium until December 31, 2022, on conducting of such activities or until Council adopts regulations for the administration of the designated activities:

- Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems.
- Site selection and construction of arterial highways and interchanges and collector highways.

Ordinance No. 122 addresses the following:

- Section 2: Designation as a matter of state interest the site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems.
- Section 3: Designation as a matter of state interest the site selection and construction of arterial highways and interchanges and collector highways.
- Section 4: Imposition of a moratorium on conducting designated activities, with certain exemptions, until December 31, 2022, or until Council adopts guidelines for the administration of the designated activities.
  - A. Water and sewer system activity subject to the moratorium.
  - B. Water and sewer system activity exempted from the moratorium.
  - C. Highway activity subject to the moratorium.
  - D. Highway activity exempted from the moratorium
  - E. Additional applications and requests subject to the moratorium.

Definitions relevant to the above two activities and contained in the Colorado Revised Statutes are as follows:

1. "Domestic water and sewage treatment system" means a wastewater treatment facility, water distribution system, or water treatment facility, as defined in C.R.S. Section 25-9-102(5), (6), and (7), and any system of pipes, structures, and facilities through which wastewater is collected for treatment. (C.R.S. Section 24-65.1-104(5))
2. "Water distribution system" means any combination of pipes, tanks, pumps, or other facilities that delivers water from a source or treatment facility to the consumer. (C.R.S. Section 25-9-102(6))

3. "Water treatment facility" means the facility or facilities within the water distribution system that can alter the physical, chemical, or bacteriological quality of the water. (Section 25-9-102(5), C.R.S.)
4. "Arterial highway" means any limited-access highway which is part of the federal-aid interstate system or any limited-access highway constructed under the supervision of the department of transportation. (Section 24-65.1-104(3), C.R.S.)
5. "Collector highway" means a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers and constructed under guidelines and standards established by, or under the supervision of, the department of transportation. "Collector highway" does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government. (Section 24-65.1-104(4), C.R.S.)

### **Procedure for the Designation of Areas and Activities and Adoption of Guidelines**

To exercise 1041 powers, the Colorado Revised Statutes require the City to designate the areas and activities to be regulated and adopt guidelines to administer the designated areas and activities. Once the City holds a public hearing and designates an area or activity to be of state interest, no person may engage in development within the designated area or conduct the designated activity until Council has determined and adopted regulations to administer designated areas and activities. The designation of areas and activities may occur only after a noticed public hearing where Council must consider, at a minimum:

1. The intensity of current and foreseeable development pressures;
2. The boundaries of any designated area;
3. Why the designated area or activity is of state interest;
4. The dangers from uncontrolled development of the area or conduct of such activity; and
5. The advantages of developing such area or activity in a coordinated manner.

Each consideration is listed below, with a summary that justifies the respective designation.

#### **1. Intensity of Current and Foreseeable Development Pressures**

The City is experiencing, and will continue to experience in the foreseeable future, projects that site and construct, partially or wholly within the City, domestic water and sewage treatment systems and arterial highways and interchanges and collector highways. Over the past two years, the City has processed two Site Plan Advisory Review applications that could have qualified for regulation under the activities being considered for designation. The City anticipates more development applications for such activities in the future.

#### **2. Boundaries of Designated Area**

No areas of state interest are being considered for designation at this time, and therefore, no area boundaries are proposed. Any designated activities would be subject to regulation throughout the City.

#### **3. Why the Designated Activity is of State Interest**

1. *Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems.*

The Cache la Poudre River is: essential to the lives of more than a half-million people in Northern Colorado; critical habitat for sensitive species; a designated National Heritage Area; and Colorado's only Wild and Scenic River. Given the population projections in Northern Colorado, coupled with the river being over-appropriated, it is likely that there will be new water and sewage treatment projects, or expansions of existing projects, that may impact the river's ecosystem health and resilience.

2. *Site selection and construction of arterial highways, arterial intersections and collector highways.*

Northern Colorado's federal and state highway system continues to expand to meet the region's growing population and transportation needs. These corridors provide the framework for local, regional and interstate travel and are important to our regional economy.

#### **4. The Dangers from Uncontrolled Development of the Conduct of Such Activity**

1. *Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems.*

Absent of 1041 Regulations, large infrastructure projects such as water supply and sewage treatment systems, are developed by public entities that are often exempt from local development standards and authority. Uncontrolled and unregulated construction of new and expansions of water and sewage treatment systems could adversely affect and conflict with surrounding land uses, residents, businesses, the natural environment, and City operations and projects.

2. *Site selection and construction of arterial highways, arterial intersections and collector highways.*

Absent 1041 Regulations, large infrastructure projects such as highway and interchange projects, can be disruptive to traffic, businesses, wildlife and residents, and result in serious socio-economic disparities. These projects are currently exempt from local development standards and authority where decisions on location and design can be made without consultation or authority from the City. Uncontrolled and unregulated construction of arterial highways, arterial highway intersections and collector highways could adversely affect and conflict with surrounding land uses, businesses, residents, the natural environment, and City operations and projects.

#### **5. The Advantages of Developing Such Area or Activity in a Coordinated Manner**

1. *Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems.*

Planned and coordinated water supply and sewage treatment systems will help ensure a resilient and sustainable Poudre River corridor, while protecting the City's public health, safety, welfare, the environment and wildlife resources, and City operations and projects. Coordination of water and wastewater treatment system projects will ensure the City achieves its policy goals to encourage development that reduces impacts on natural ecosystems and promotes sustainability and resilience.

2. *Site selection and construction of arterial highways, arterial intersections and collector highways.*

Planned and coordinated highway and interchange projects will help protect the City's public health, safety, welfare, the environment and wildlife resources, and City operations and projects. Coordination on the location and construction of new highway and interchange projects will help ensure the City achieves its policy goals to encourage development that reduces impacts on natural ecosystems and promotes sustainability and resilience.

#### **MORATORIUM ON CONDUCTING DESIGNATED ACTIVITIES**

If Council decides to designate either or both activities, Section 24-65.1-404, C.R.S., prohibits any person from conducting such activity "[a]fter a matter of state interest is designated . . . until the designation and guidelines for such area or activity are finally determined pursuant to this article." In other words, a moratorium on such activity is imposed until Council makes a final determination and adopts regulations for the administration of the designated activity or activities. In addition to the moratorium on conducting designated activities authorized by Section 24-65.1-404, C.R.S., the City has the power to impose a moratorium on development activity pursuant to its home rule powers granted under Article XX of the Colorado Constitution.

To provide sufficient time for staff to research and draft regulations for any activity that Council designates, staff recommends not only imposing a moratorium on designated activities, but also placing a moratorium on other City approvals related to such activities including on the receipt and processing of Site Plan Advisory Review applications, encroachment and flood plain permits, and requests to acquire City real property or rights in City property such as easements. The moratorium contains a number of exemptions as described in Ordinance No. 122.

### **COUNCIL APPROPRIATION ORDINANCE**

Based on development pressures the City is facing now and in the foreseeable future, three options have been prepared for Council consideration that range in project scope. Inherent in each option is an appropriation for consulting services to support project completion. The appropriation increases in proportion to the expanded scope.

#### **Option #1: \$50K Needed; 10-12 Months to Complete**

This option is the recommended minimum scope for the adoption of 1041 Regulations. Because new development is imminent under each Activity, staff is initiating the designation of the Activities through a public hearing required by state statutes.

- Site selection and construction of water and sewage treatment systems
- Site selection and construction of highways and interchanges

#### **Option #2: \$70K Needed; 10-12 Months to Complete**

The expanded scope includes one additional Activity, "Site selection and construction of major facilities of a public utility." Projects under this Activity are regulated through the SPAR process and could result in significant impacts. While no new development under this Activity is known, this Activity is seen as a higher risk given its potential impacts and the City's current lack of authority.

- Site selection and construction of water and sewage treatment systems
- Site selection and construction of highways and interchanges
- Site selection and construction of major facilities of a public utility

#### **Option #3: \$80K Needed; 10-12 Months to Complete**

Option 3 includes all potential development categories the City could face now and in the foreseeable future.

The first additional Activity, "Efficient use of water for municipal and industrial projects," could be applied to industrial projects with high operational water usage to ensure sustainable practices are employed. While the City's local authority and design standards in the Land Use Code would apply, and a project of this scale within City limits is unlikely, 1041 Regulations could be advantageous to regulate water efficiency should a development of this type occur.

The second additional Activity, "Site selection of rapid or mass transit terminal, stations and fixed guideways," would apply to the location of mass transit facilities. While local authority and design standards in the City's Land Use Code (not SPAR) would apply, 1041 review might be a better tool for a project of significant scale.

1. Site selection and construction of water and sewage treatment systems
2. Site selection and construction of highways and interchanges
3. Site selection and construction of major facilities of a public utility
4. Efficient use of water for municipal and industrial projects
5. Site selection of rapid or mass transit terminals, stations, and fixed guideways

### **Comparison of Options**

	<b>Considerations</b>
<b>Option 1</b>	<ul style="list-style-type: none"><li>• Addresses immediate development pressure</li><li>• State statutes are flexible and allow more activities and areas to be designated over time</li></ul>
<b>Option 2</b>	<ul style="list-style-type: none"><li>• Addresses development with lowest authority but potential for highest impact</li></ul>
<b>Option 3</b>	<ul style="list-style-type: none"><li>• Addresses all immediate and potential development pressure</li><li>• Includes project types that are already regulated by development standards in the Land Use Code (not SPAR)</li></ul>

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#### **CITY FINANCIAL IMPACTS**

Staff is seeking a mid-cycle appropriation from General Fund reserves to complete the project. Should the scope expand beyond the activities being designated through this Ordinance, the appropriation will increase in proportion to the expanded scope.

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#### **BOARD / COMMISSION RECOMMENDATION**

Staff presented options to boards and commissions prior to the September 21, 2021, public hearing/Council meeting to solicit initial feedback. **(Attachment 1)**

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#### **PUBLIC OUTREACH**

Public outreach will be performed as regulations are being developed.

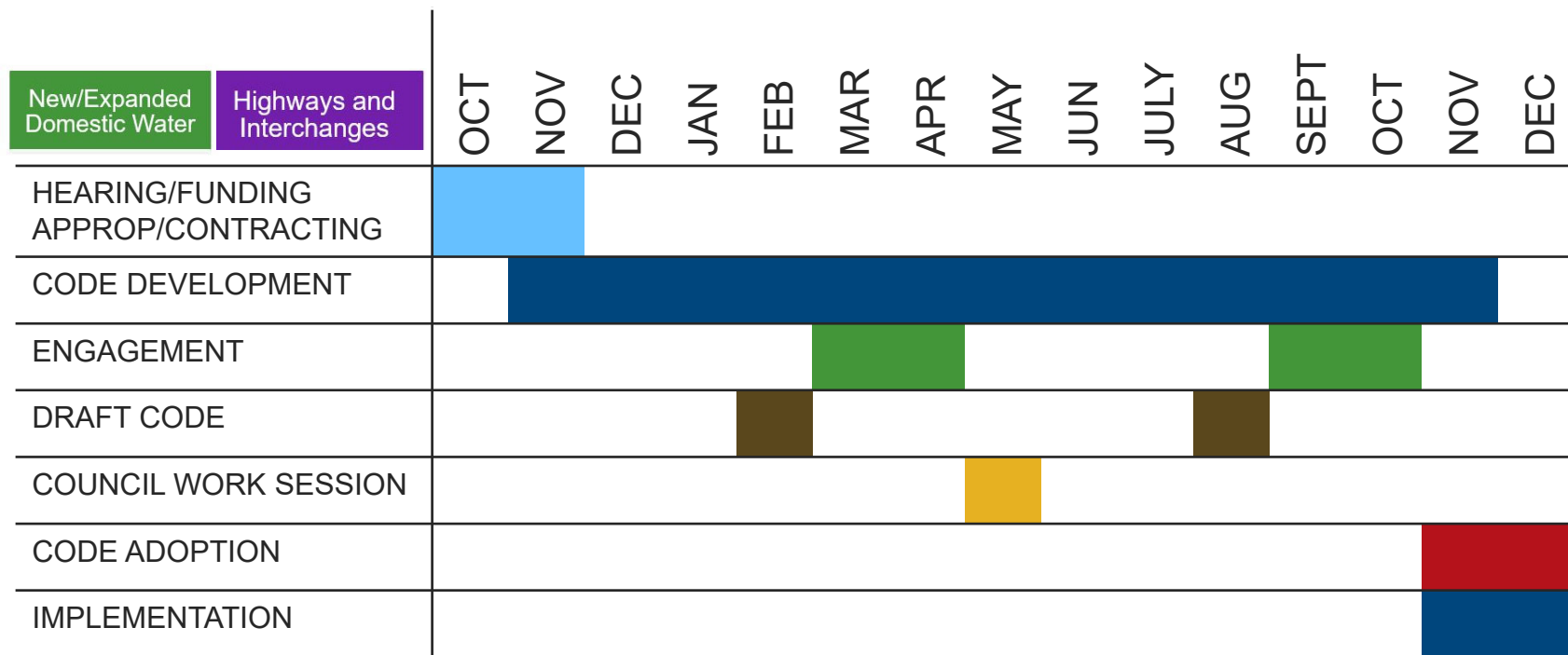
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#### **ATTACHMENTS**

1. Powerpoint Presentation (PDF)



## Project Timeline





Mayor Jeni Arndt  
City of Fort Collins  
City Hall West  
300 Laporte Avenue  
Fort Collins, Colorado 80521  
jarndt@fcgov.com

October 8, 2021

**Re: City of Fort Collins Consideration of Ordinance No. 122, 2021 – Designation of Areas and Activities of State Interest Regulations**

Dear Mayor Arndt,

This letter is to supplement the memorandum provided to you and City Council by East Larimer County Water District and North Weld County Water District (Districts) regarding Council's current consideration of the proposed Ordinance No. 122 (1041 Regulations – AASI). Along with the Districts, we are discouraged with the Council and City staff regarding a lack of public engagement and understanding of 1041 Regulations and their impacts in advance of the initial September 21, 2021, ordinance hearing. Furthermore, we are concerned and would like to communicate to the City that adopting 1041 Regulations, as currently drafted, will have significant direct and indirect economic impacts within the City of Fort Collins and the surrounding communities. With this letter, we specifically request Council:

1. Delay the second reading on proposed Ordinance No. 122, 2021 and the Moratorium being considered.
2. Allow applicable stakeholders to participate in the 1041 regulation adoption process.
3. Allow Phase 3 of the NEWT Pipeline Project to proceed under the current SPAR approval process as an approval delay will:
  - a. Have significant impacts to our municipal operations in both the near-term and in the future.
  - b. Indirectly limit the ability of local communities to support the vibrancy of Northern Colorado including the City of Fort Collins.

Respectfully,

Nicholas J. Wharton, MPA, ICMA-CM  
Town Manager  
Town of Severance  
[nwharton@townofseverance.org](mailto:nwharton@townofseverance.org)  
970-686-1218

Copy: Council Members: Susan Gutowsky (District 1), Julie Pignataro (District 2), Tricia Canonico (District 3), Shirley Peel (District 4), Kelly Ohlson (District 5), Emily Francis (District 6)





Mayor Jeni Arndt  
City of Fort Collins  
City Hall West  
300 Laporte Avenue  
Fort Collins, Colorado 80521  
jarndt@fcgov.com

October 8, 2021

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  - b. Indirectly limit the ability of local communities to support the vibrancy of Northern Colorado including the City of Fort Collins.

Respectfully,

  
Matthew Fries  
Mayor  
Town of Severance  
[matthew.fries@townofseverance.org](mailto:matthew.fries@townofseverance.org)  
970-686-1218

Copy: Council Members: Susan Gutowsky (District 1), Julie Pignataro (District 2), Tricia Canonico (District 3), Shirley Peel (District 4), Kelly Ohlson (District 5), Emily Francis (District 6)



## MEMO - URGENT

---

TO: City Council, City of Fort Collins

FROM: Mr. Mike Scheid, District Manager, East Larimer County Water District  
Mr. Eric Reckentine, District Manager, North Weld County Water District

DATE: October 6, 2021

RE: **City of Fort Collins Consideration of Ordinance No. 122, 2021 – Designation of Areas and Activities of State Interest Regulations – NEWT Pipeline Project**

---

This supplemental memorandum is submitted to provide clarification and fill data gaps associated with the discussions on the NEWT 3 Pipeline Project that took place at the City of Fort Collins City Council meeting on September 21, 2021. Both the East Larimer County Water District (ELCO) and the North Weld County Water District (North Weld) are disappointed and concerned that additional and more accurate NEWT 3 Pipeline Project information was not solicited from ELCO or North Weld and provided to members of City Council at the first reading of the proposed Ordinance No. 122, 2021. The paragraphs below provide salient information that the Districts believe is critical for City Council to review and understand prior to the second reading scheduled for October 19, 2021.

### 1 PROJECT HISTORY

Over the last 16 years, ELCO and North Weld have worked collaboratively to evaluate, plan, permit, design, and construct the jointly owned NEWT Pipeline Project. The acronym NEWT refers to this multi-year, multi-phase North Weld County and East Larimer County Water Districts Water Transmission Pipeline Project (Project).

For over 55 years, the Districts have relied on several 24-inch pipelines to convey water from storage and treatment at Horsetooth Reservoir through Fort Collins to serve their respective customers. In the early 2000s, the Districts began discussions on how best to prepare for the future delivery of water considering their aging waterlines and the need to meet the growing population of their customer bases. Out of these discussions came the concept of collaboratively building a single shared pipeline rather than two separate pipelines as had been done in the past. While the Districts had historically relied on separate transmission lines to convey treated water through Fort Collins, the shared pipeline concept was favored to reduce impacts to and through the transmission route and to share resources (financial and personnel) between the Districts. The following activities reflect the joint efforts between the Districts associated with the first two phases (NEWT 1 and 2) of this 3-phase project.

NEWT PHASE 1 and 2 TIME LINE	
Task	Completion
Project Hydraulic and Pipe Sizing Evaluations	2004
NEWT 1 – Routing Study	2006
NEWT 1 – Larimer County Location and Extent Permit	2006
NEWT 1 – Fort Collins Location, Character, and Extent Permit	2006
NEWT 1 – Permitting / Design	2009
NEWT 1 – Construction	2010
NEWT 2 – Routing Study	2007
NEWT 2 – Larimer County Location and Extent Permit	2008
NEWT 2 – Permitting / Design	2014
NEWT 2 – Construction	2016

With the completion of Phases 1 and 2, the Districts were able to increase conveyance capacity between the jointly owned and operated Soldier Canyon Filter Plant (SCFP) and their Summit View Pump Station (SVPS) located along North Timberline Road. Completion of Phases 1 and 2 also provided much needed operational flexibility and redundancy. After the completion of Phases 1 and 2, the Districts continued to closely monitor their west to east transmission capacity needs to meet growing water demands east of Timberline Road. In 2018, the Districts initiated the process of planning, designing, permitting, and constructing the third and final phase of the Project as the first and second phases demonstrated that the Project would take significant time. The following efforts and events have taken place over the last 2 and ½ years and are leading to the anticipated conclusion of the City's Site Plan Advisory Review (SPAR) process by the end of 2021.

NEWT PHASE 3 TIME LINE	
Task	Completion
Natural and Cultural Resources Assessment	08/20/2018
Routing Study	07/24/2019
Fort Collins Conceptual Review Application	12/13/2019
Fort Collins Conceptual Review Meeting	01/16/2020
Fort Collins Site Plan Advisory Review (SPAR) Checklists / Guidance provided by City	01/17/2020
Draft SPAR Report Developed by engineering consultants	02/02/2020
SPAR Application + Report Submittal Coordination Meeting w/ Fort Collins	02/12/2020
Site Meeting with Fort Collins Forestry Department	02/12/2020
<i>COVID-19 Pandemic / Internal District Coordination – Project Hold</i>	
District Request for SPAR Re-engagement	5/17/2021
SPAR Re-engagement Meeting with City Staff (Virtual)	5/27/2021
District Property Owner Coordination Prior to SPAR Open House	8/20/2021
SPAR Open House Preparation Meeting with City staff (Virtual)	8/23/2021
Fort Collins Hearings Notification of Adoption of HB-1041 Regulations	9/08/2021
SPAR Community Open House	9/30/2021 <sup>1</sup>
Complete Ecological Characterization Study (ECS)	11/1/2021
Complete Planning Submittal Drawings / Figures	11/8/2021
Submittal Appointment - Final SPAR Application + Report Submittal	11/15/2021 <sup>2</sup>
Planning and Zoning Commission Meeting (3 <sup>rd</sup> Thursday of December)	12/16/2021

## 2 PROJECT OVERVIEW AND NEED

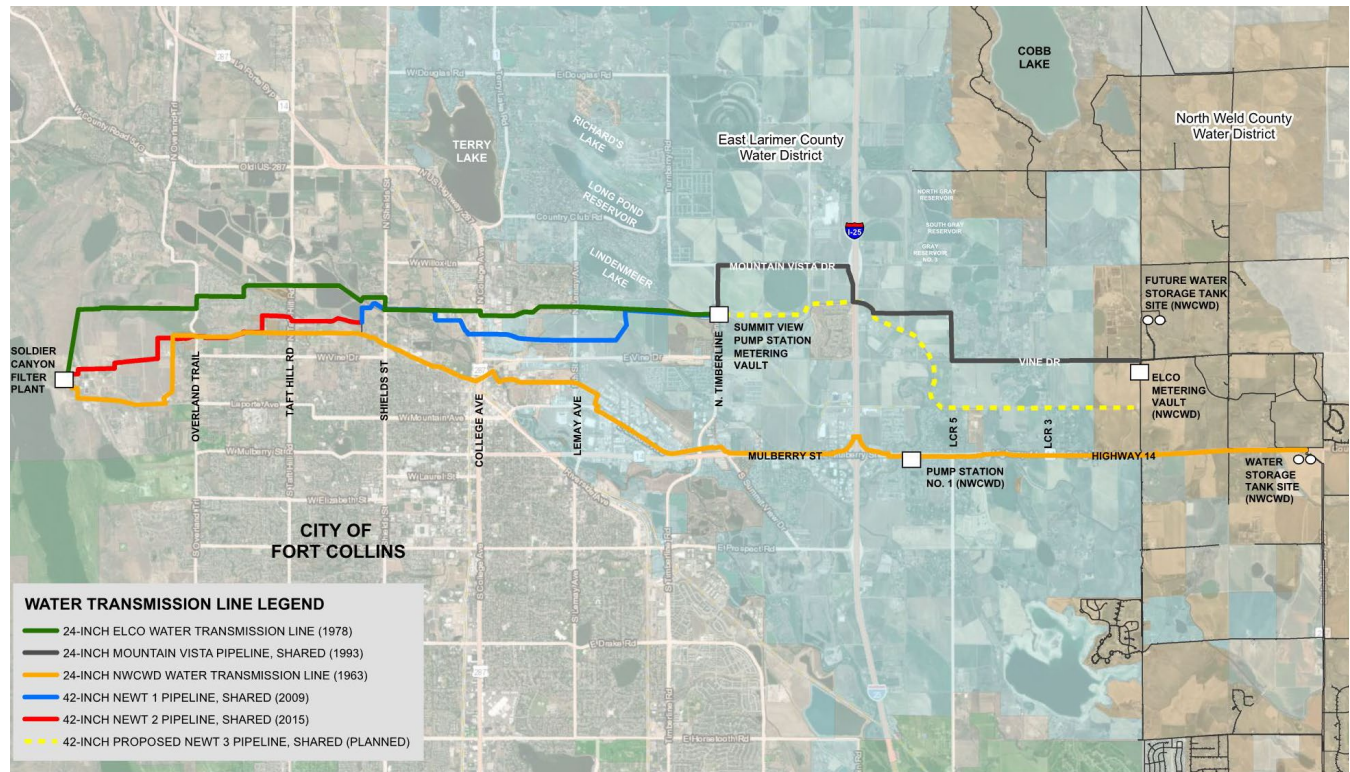
As shown in Figure 1-1 below, the Districts currently rely on several transmission pipelines to meet customer water demands. ELCO heavily relies on the completed first and second phases of the NEWT Pipeline (**red/blue**), an additional 24-inch pipeline (also shared with North Weld) located generally along Mountain Vista Drive that was constructed in 1993 (**gray**), the use of the SVPS, and an existing 24-inch pipeline constructed in 1978 between the SCFP and North Timberline Road (**green**). The existing 24-inch transmission line generally operates parallel to the currently constructed and shared NEWT Pipeline and provides transmission capacity to the center of ELCO's distribution system.

<sup>1</sup> Tentative Open-House Schedule discussed with City Staff on 8/23 prior to 1041 Adoption Notification being delivered on 9/8

<sup>2</sup> Tentative SPAR Application and Report Delivery to follow 9/30 SPAR Community Open House



Like ELCO, North Weld relies on the first and second phases of the NEWT Pipeline described above, as well the shared 24-inch pipeline located along Mountain Vista Drive and the SVPS. North Weld refers to these transmission pipelines and the SVPS as its North System which is used to convey water from the SCFP to North Weld's distribution system. In addition, North Weld operates a South System which is comprised of an existing 24-inch transmission line that conveys flow from the SCFP to the North Weld's distribution system and includes Pump Station 1 (PS1) located on Mulberry Street (S.H. 14) east of Interstate 25 (orange). The installation of the existing 24-inch transmission line was completed in 1963. PS1 was originally constructed in 1984.



**FIGURE 1-1: EXISTING TRANSMISSION SYSTEM**

Prior to the initiation of NEWT Phases 1 and 2, the Districts identified the future need for Phase 3 to provide additional capacity above that provided by the NEWT Phases 1 and 2, the shared 24-inch Mountain Vista Pipeline, and their independently owned and operated 24-inch transmission lines. Over the last several years, demands in both Districts have steadily increased and during recent summer demand seasons, the Districts have identified an upcoming need for increased transmission line capacity in order to continue to meet the water supply requirement of their current and new customers. One area both Districts are aware of where water demands are projected to significantly increase is along the Interstate 25 corridor and Phase 3 of the NEWT Pipeline will be critical to support this projected increase in demands.

In addition to the need to increase transmission capacity, the Districts need to add redundancy to their respective transmission systems. Given the age of the existing pipelines, the completion of the NEWT Pipeline Project is critical to allowing the Districts to properly manage the risks associated with their continued operation and provide redundancy for future replacement/rehabilitation of those older lines.

### 3 CONSEQUENCES OF ADOPTION OF ORDINANCE NO. 122, 2021 AND MORATORIUM

#### **ELCO Impacts**

In the event the City adopts proposed Ordinance No. 122, 2021 and enacts the associated moratorium on pipelines designed for transmission of treated water (like NEWT), planned development in Northeast Fort Collins will be impacted as follows:

1. ELCO's master planning and hydraulic modeling efforts are based, for the most part, on development subject to the City's land use planning for development within the City's GMA. ELCO's modeling indicates the need for additional treated water transmission line capacity in Northeast Fort Collins. As discussed above, the NEWT Phase 3 treated water transmission line is the third and final phase of a project ELCO has been designing and constructing over the past 16 years that conveys treated water from the Soldier Canyon Water Treatment Plant to Northeast Fort Collins and other parts of Larimer County. Because ELCO has been working on NEWT Phase 3 for several years, the District believes it could be approved under current City processes (SPAR) this year and proceed to construction in 2023. A Moratorium on the current approval process will substantially limit the availability of necessary transmission line capacity necessary for ELCO to deliver sufficient treated water to planned development within Northeast Fort Collins. Subjecting NEWT 3 to a lengthy 1041 approval process after the Moratorium will delay ELCO's ability to serve currently planned development within Northeast Fort Collins.
2. The primary beneficiaries of ELCO's treated water service using Phase 3 of the NEWT Pipeline will be developments located along and adjacent to the I-25 Corridor, many of which have been approved by the City. Among the potentially effected developments are Montava, Bloom, and several development projects being planned at the I-25 and Prospect interchange. Each of these developments is depicted on the Figure attached to the District's September 21, 2021 initial comment submittal.
3. Delays or the introduction of high degrees of uncertainty that would result from the adoption of City of Fort Collins Ordinance No. 122 and the Moratorium, will impact the availability of treated water transmission line capacity which will directly affect and likely prohibit the development of current and future residential and commercial projects in Northeast Fort Collins, including but not limited to those depicted on the Figure attached to the District's September 21, 2021 initial comment submittal.

#### **North Weld Impacts**

North Weld is responsible for the distribution of treated water for domestic, commercial and industrial uses to customers in its 325 square mile service area within Larimer and Weld Counties. In addition to serving customers within unincorporated portions of Weld and Larimer Counties, North Weld provides water service to the towns of Gill, Galeton, and Lucerne through individual water meters. Additionally, pursuant to various water service contracts, North Weld also is the sole provider of water through master meters to the towns of Ault, Eaton, Nunn, Pierce, Severance, and provides most of the potable water supply to the town of Windsor. North Weld also provides bulk water service to the Northern Colorado Water Association, a nonprofit association serving individual customers around Wellington and developments within the Town of Timnath. These communities are bedroom communities surrounding the City of Fort Collins. Residents of these communities come to Fort Collins for much of their commercial and recreational needs. The effects of adoption of proposed Ordinance No. 122, 2021 and enactment of the associated moratorium will impact North Weld as follows:

1. North Weld's master planning and hydraulic modeling efforts are based, for the most part, on development subject to local municipal land use planning in North Weld's service area. North Weld's hydraulic modeling, master planning, and capital improvement planning indicate the need for additional

treated water transmission line capacity. As a project partner with ELCO, North Weld has also been engaged in planning, designing and constructing the NEWT Pipeline Project, including Phase 3, over the past 16 years to convey treated water from the Soldier Canyon Water Treatment Plant to parts of Larimer and Weld Counties, a significant number of municipal systems, and future development. As described above, North Weld has been working on Phase 3 of the Pipeline Project for years, and also believes it could be approved under current City processes this year and proceed to construction in 2023. A Moratorium on the City's current approval process (SPAR) will substantially impact North Weld's ability to deliver sufficient treated water to planned development in Larimer and Weld Counties, its municipal customers, and particularly to planned development in and around the numerous bedroom communities surrounding Fort Collins. Subjecting NEWT 3 to a lengthy 1041 process after the Moratorium will delay North Weld's ability to service these planned developments around Fort Collins.

2. Delays or the introduction of high degrees of uncertainty as a result of the adoption of City of Fort Collins Ordinance No. 122 and the Moratorium will impact the availability of treated water transmission line capacity which will directly affect and likely prohibit the development of current and future residential and commercial projects as described above.

#### 4 DISTRICTS' REQUESTS

The Districts respectfully request that the City staff and City Council carefully consider the current circumstances that are driving the City to evaluate the adoption of 1041 regulations and the Moratorium. Over the last two weeks, the Districts have quickly begun to evaluate additional impacts to other water transmission and distribution line projects that are in the Districts' respective planning queues. However, given the abrupt timing of this proceeding, the analysis of additional impacts is not complete. Based on the significant identifiable impacts with approval of 1041 regulations and the Moratorium, the Districts respectfully requests that the City Council:

1. Delay the second reading on proposed Ordinance No. 122, 2021 and the Moratorium. The City has not engaged stakeholders (including ELCO and North Weld) in a meaningful way whose planned facilities would be impacted by being designated as Areas and Activities of State Interest under 1041 regulations. Should the City County delay the second reading, ELCO and North Weld are committed to working in a collaborative manner with the City to craft appropriate regulations. However, engaging stakeholders after imposing the Moratorium will be counter-productive and result in serious unintended consequences.
2. Alternatively, if the second reading can not be delayed, allow the Districts to be participatory in the adoption process. The Districts believe City Council and staff should engage stakeholders in a more proactive manner including but not limited to participation in City Council work sessions. Should the City only rely on limited public statements and the submittal of written comments, meaningful discussion and education on this issue will not take place. This will lead to serious and unintended consequences.
3. If possible, direct staff to work with stakeholders on draft regulations without designating specific activities. Not designating specific activities would eliminate the need for a Moratorium and would provide for beneficial stakeholder engagement that will result in well-crafted and useful regulations.
4. Allow Phase 3 of the NEWT Pipeline Project to proceed under SPAR. The Districts have worked with the City planning staff for nearly 2 years on this Project under SPAR and are well into the process as described in Section 1. Furthermore, Phase 1 of the project was successfully completed using the previous Character, Location, and Extent process. Based on past work and currently completed efforts, along with the specifics associated with the NEWT Pipeline Project, the District believe there is no need to deviate from SPAR for this final phase of the Project.



October 5, 2021

Subject: **Ordinance Number 122, 2021**

To: Madam Mayor and Fort Collins City Council Members,

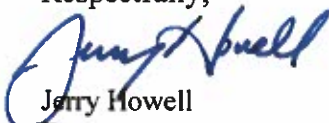
The Poudre Fire Authority is aware of Ordinance Number 122, 2021 relating to 1041 regulations. Additionally, we are mindful of all regulations that ultimately impact development in our community.

The Poudre Fire Authority cannot speak to the infrastructure resiliency of any of the water purveyors. However, we can assure Council that all new developments reviewed by the Poudre Fire Authority are subject to a comprehensive and robust development review process.

This review includes such things as road access, cul-de-sac dimensions, fire hydrant spacing, hydrant placement as well as established fire flow water requirements for fire suppression.

The development review process and inclusion of safeguards will continue going forward to be an important part of overall fire protection service in our community.

Respectfully,

  
Jerry Howell  
Fire Marshal  
Poudre Fire Authority

c. Kelly Smith, Senior Environmental Planner  
Derek Bergsten, Fire Chief





To: Mayor Jeni Arndt	Date: 10/13/2021
1. You received the attached correspondence from: <b><u>Jesse Eastman, FC Nursery.</u></b>	
2. If no staff follow-up is requested, you do not need to take any additional action _____.	
3. If staff follow-up is requested, please indicate your preference(s) below: _____File the correspondence as a SAR. _____Place a copy in the next "Thursday packet / /2021" _____Other: _____.	
Please return the correspondence and this completed form to Sarah Kane. Thank you.	

RECEIVED

OCT 13 2021

Mayor Jeni Arndt  
City of Fort Collins  
City Hall West  
300 LaPorte Avenue  
Fort Collins, Colorado 80521  
jarndt@fcgov.com

City Manager's Office

October 8, 2021

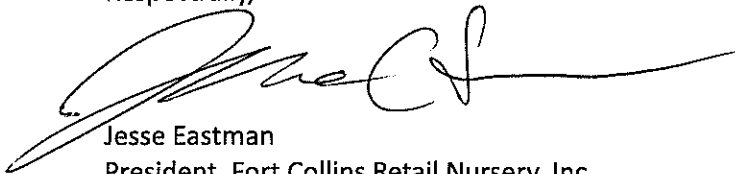
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1. Delay the second reading on proposed Ordinance No. 122, 2021 and the Moratorium being considered,
2. Allow applicable stakeholders to participate in the 1041 regulation adoption process,
3. Allow Phase 3 of the NEWT Pipeline Project to proceed under the current SPAR approval process as an approval delay will:
  - a. Have significant impacts to ongoing business development of Fort Collins Retail Nursery, Inc. We are in the midst of and are already permitted to begin construction on a plant growing facility in Ault which will rely on North Weld County Water District for field and office operations, both in the near and long term.
  - b. Indirectly limit the ability of local communities to support the vibrancy of Northern Colorado including the City of Fort Collins.

Respectfully,



Jesse Eastman  
President, Fort Collins Retail Nursery, Inc  
970-482-1984  
j.eastman@fortcollinsnursery.com

Copy:

Council Members: Susan Gutowsky (District 1), Julie Pignataro (District 2), Tricia Canonico (District 3), Shirley Peel (District 4), Kelly Ohlson (District 5), Emily Francis (District 6)

**Fort Collins  
NURSERY**

2121 E. Mulberry • Fort Collins, Colorado 80524

DENVER CO 802

9 OCT 2021 PM 4 L



Mayor Jeni Arendt  
City of Fort Collins  
300 LaPorte Ave  
Fort Collins, CO 80521

**RECEIVED**  
OCT 13 2021

City Manager's Office

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



**Planning, Development & Transportation  
Community Development & Neighborhood Services**  
281 N. College Ave.  
PO Box 580  
Fort Collins, CO 80522  
970.416.2350  
970.224.6134 FAX  
[www.fcgov.com](http://www.fcgov.com)

## MEMORANDUM

**Date:** July 28, 2021

**To:** Mayor and Councilmembers

**Thru:** Darin Atteberry, City Manager   
 Kyle Stannert, Deputy City Manager   
 Caryn Champine, Planning, Transportation and Development Director   
 Paul Sizemore, Community Development and Neighborhood Services Director 

**From:** Kelly Smith, Senior Environmental Planner 

**Re:** July 27, 2021 Work Session Summary: 1041 Regulations

On July 27, 2021, Mayor Arndt, and Councilmembers Peel, Pignataro, Ohlson, Canonico, Gutowsky, and Gorgol participated. Staff members included Kelly Smith and Paul Sizemore.

Staff presented a thorough overview on the current code, the outreach and research performed to date, options for developing 1041 Regulations, and a request for a mid-cycle appropriation to support the project.

### Discussion:

- Councilmembers emphasized the importance of balancing efficient processes with effective environmental review
- A desire was expressed to develop the regulations once and to attempt to do it correctly the first time
- Some concern was expressed about adding delay to public projects, and duplication of review, alongside a desire to improve project outcomes with these regulations
- Councilmembers discussed the fact that these regulations would have specific thresholds and would not likely be applied frequently
- Councilmembers expressed a desire to have all available tools in the City's toolbox for environmental regulation
- There was some support for a comprehensive process, and there was also some support for looking at opportunities to advance elements of the proposal that are less complicated or controversial
- There was considerable support for a mid cycle appropriation and staff was asked to verify if a greater amount of money would be beneficial
- Councilmembers expressed a desire to make this a Fort Collins specific regulation and to focus on major projects

### Next Steps:

- Staff agreed to return with an appropriation and proposal to designate activities of interest, and will present both options for Council as well as any additional hybrid options to be chosen from at the hearing
- Item is scheduled for first reading on September 21, 2021.

# MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



## **DRAFT MINUTES** WATER COMMISSION

### REGULAR MEETING

September 16, 2021, 5:30-7:30 p.m.

Hybrid in person at 222 LaPorte Ave and online via Zoom

#### 1. CALL TO ORDER

5:30 p.m.

#### 2. ROLL CALL

- *Commissioners Present:* Kent Bruxvoort (Chairperson), Michael C. Brown, Jr., Cibi Vishnu Chinnasamy, Tyler Eldridge, Randy Kenyon, Phyllis Ortman, Jason Tarry
- *Commissioners Absent - Excused:* Greg Steed (Vice Chairperson), John Primsky, Paul Herman
- *Staff Members Present:* Eileen Dornfest, John Song, Lance Smith, Richard Thorp, Kelly Smith, Jason Graham, Allison Becker, Jill Oropeza, Sydney Phillips Grace
- *Members of the Public:* None

#### 3. AGENDA REVIEW

- Chairperson Kent Bruxvoort briefly summarized items on the agenda

#### 4. COMMUNITY PARTICIPATION

- None

#### 5. APPROVAL OF MINUTES

**CHAIRPERSON BRUXVOORT ASKED FOR COMMENTS AND REVISIONS ON THE AUGUST 19 MINUTES.**

**Commissioner Ortman moved** to approve the August 19 minutes.

**Commissioner Chinnasamy seconded the motion.**

**Vote on the motion:** It passed unanimously, 7-0

#### 6. NEW BUSINESS

##### a. Staff Reports

*(Attachments available upon request)*

- i. **Financial Monthly Report**  
(meeting packet only)
- ii. **Water Resources Monthly Report**  
(meeting packet only)

# MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



## **DRAFT MINUTES** WATER COMMISSION

### **REGULAR MEETING**

#### Discussion Highlights

A Commissioner inquired if there are any assessments about the viability of the lakes and whether there are any that may not be worth the resources required to manage them for cost-efficiency. Mr. Thorp responded that many if not most of the lakes are manmade with specific functions and issues and hopes that the guidance will help managers to prioritize resources and plan accordingly for the fate of each lake by determining best practices. Another Commissioner asked about the key concerns observed that are affecting the lakes. Mr. Thorp responded that recurring algal blooms and their consequences, such as the release of sulfur dioxide and subsequent odor issues, are some of more prominent concerns among others, such as nutrient runoffs, sediment issues, and E. Coli hazards.

#### v. **1041 Regulations**

Kelly Smith, Senior Environmental Planner, presented on the 1041 Regulations Project, a Council-directed project to evaluate if 1041 regulations—which determines whether designated areas or activities have state interest and gives local governments control over development projects occurring within their jurisdiction even when the project has statewide impacts—achieve City policy and regulatory goals.

#### Discussion Highlights

A Commissioner asked what other cities have adopted this already. Ms. Smith responded that it's counties that have predominantly adopted these regulations, including Larimer County, but other examples of cities are Louisville, Commerce City, Golden, and Idaho Springs. The Commissioner inquired why does the City of Fort Collins need it if Larimer County has already adopted it. Ms. Smith responded that it's because the City's voice is only advisory and does not have any authority through the County's current process. Another Commissioner wondered if the Halligan Project required going through the County's 1041 regulations, which it did. Another Commissioner inquired about the chief obstacles that need to be achieved to attain what they need. State statutes keep the City limited in its scope and the City's land use code isn't designed for large projects, so the 1041 regulations would be a great tool to allow for a stronger voice. All in all, Commissioners felt unqualified to provide a strong recommendation for future steps, but hopes to hear of its results.

#### b. **Regular Items**

*(Attachments available upon request)*

# MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



## NATURAL RESOURCES ADVISORY BOARD

### TYPE OF MEETING – REGULAR

September 15, 2021 5:30 – 8:00 pm  
Via Zoom

### CALL TO ORDER - 5:30PM ROLL CALL

- List of Board Members Present

- Kevin Krause
- Dawson Metcalf
- Drew Derderian
- Barry Noon
- John Skogman

List of Board Members Absent

- Danielle Buttke - chair
- Elizabeth Hudetz
- Samantha Williams
- Hillary Mizia

- List of Staff Members Present

- Lindsay Ex, Staff Liaison
- Richard Thorp, Watershed Program Manager, Utilities
- Sydney Phillips Grace - Utilities Watershed Technician
- Kelly Smith, Sr. Planner

- List of Guests

- none

### 1. AGENDA REVIEW

- No changes

### 2. COMMUNITY MEMBER PARTICIPATION

- N/A

### 3. APPROVAL OF MINUTES - JULY & AUGUST

- Barry moved and John seconded a motion to approve both the July and August NRAB draft minutes as presented. Motion approved unanimously 5-0-0

### 4. NEW BUSINESS



## NATURAL RESOURCE ADVISORY BOARD

### TYPE OF MEETING – REGULAR

---

- Discussion
  - Barry - **Q** - What are the indicators you are measuring to assess water quality of the lakes? **A** - This is not a water quality plan, so we are not measuring water quality.
  - Barry **Q** - So are there any on-going monitoring programs for water quality? **A** - Yes, for a few lakes, like Rigden lake, but most don't need that type of monitoring. This plan is a first step type of guidance for water managers to help them develop a water management plan that could include water quality monitoring, depending on the amount of resources available to do that.
  - Barry - **Q** - Water quality affects the fish population that are often consumed by people. There might be a health issue if there are heavy metals in the lakes. **A** - Colorado Parks and Wildlife are considering doing that type of monitoring.
  - Dawson - **Q** - What determines a body of water to be a lake? What is going on with the lakes within the City that aren't managed by any department in the city? **A** - Standing water bodies such as ponds, lakes, temporary lakes, retention and detention ponds, and reservoirs fall under the term "lake". The unmanaged lakes are being addressed and examined. It is a work in progress.
  - Dawson - **Q** - Where are you gathering best practices to manage these lakes? **A** - A variety of regional sources are being researched and gathered by our consultants.
  - John -**Q** - Will best practices address lakes that have not been managed well and how to remedy that? **A** - It will mostly be a listing of best practices and what they help to mitigate, their cost and where they have been used, based on our interviews, consultants, and surveys.
  - Kevin - **Q** - It would be nice to see transparency on how the City manages these lakes and what is used. **A** - That is not within the scope and budget for this project but it would be helpful for the community to do that at a later time; perhaps in a web map of the City's lakes.

**b. Approaches to Regulating Areas and Activities of State Interest Pursuant to Powers Established in State Law Commonly Referred to as 1041 Powers - Kelly Smith, Sr. Planner**

- Definition of 1041 regulations
  - 1041 Regulations allow governments to identify, designate and regulate activities of state interest through a local permitting process. The purpose is to give local governments control over development projects occurring within their jurisdiction, even when the project has statewide impacts. A local government must designate the areas or activities of state interest

## NATURAL RESOURCE ADVISORY BOARD

### TYPE OF MEETING – REGULAR

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- and adopt guidelines pursuant to state statutory procedures and limitations to regulate them through a public hearing
  - The areas of state interest are: mineral resource areas; natural hazard areas; historical/natural/archaeological resource areas and areas around key facilities.
  - The activities of state interest to be regulated are: new/expanded water/sewer treatment; municipal/industrial water treatment; highways and interchanges, public utilities, new communities, solid waste disposal; mass transit; airports; geothermal resources; and nuclear detonation areas.
  - Local communities do not usually designate areas unless it is for a very specific area or reason within their jurisdiction.
- Process of determining need to use 1041 powers within the City of Fort Collins
  - In May, 2021 Council asked staff to investigate what would be necessary to implement 1041 regulations in Fort Collins. In July staff determined the 1041 regulations would support City policy and regulatory goals.
  - The City will hold a public hearing on September 21 to determine what areas of interest the city would regulate. No development can occur until designation and guidelines are adopted. Once designation and guidelines are adopted, applications for permits can be accepted. Items to be discussed at the hearing are:
    - The intensity of current and foreseeable development pressures
    - The boundaries of any designated area
    - Why the designated area or activity is of state interest
    - The dangers from uncontrolled development of the area or conduct of such activity
    - The advantages of developing such area or activity in a coordinated manner.
  - The three options for local 1041 regulations that will be presented at the September 21 hearing would:
    1. Address immediate development pressure. This option would regulate:
      - Immediate development pressure. State statutes are flexible and allow more activities and areas to be designated over time.
    2. Address development with lowest authority but potential for highest impact - This option would regulate:
      - New/expanded domestic water, municipal/industrial water projects,

## NATURAL RESOURCE ADVISORY BOARD

### TYPE OF MEETING – REGULAR

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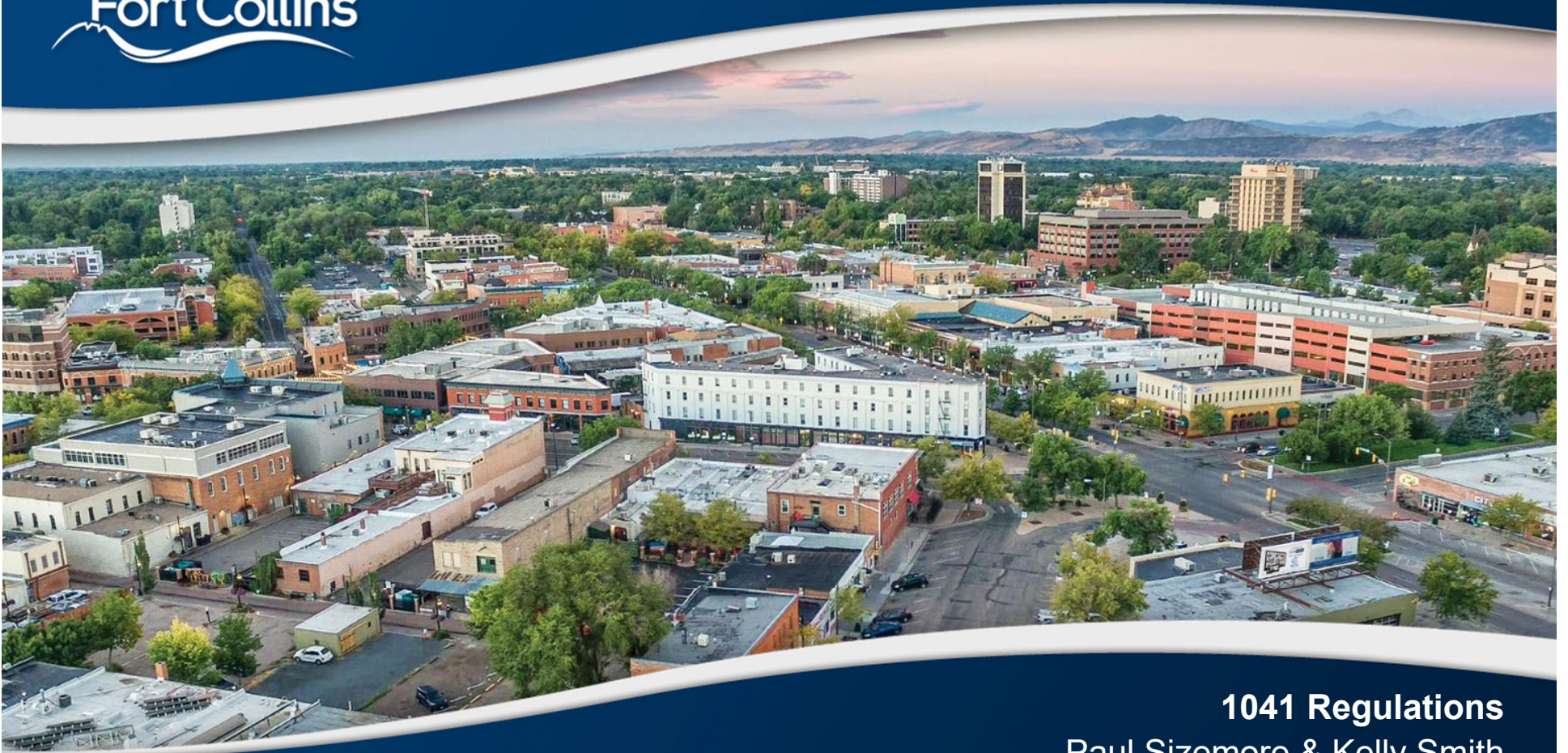
highways and interchanges - plus public utilities

3. Address all potential development and includes projects that may be regulated by the City's Land Use Code. This option would regulate:
  - New/expanded domestic water, municipal/industrial water projects, highways and interchanges, public utilities, plus public transit
- Next steps
  - Outreach to boards and commissions
  - September 21 City Council public meeting to consider two ordinances to designate water and also highway projects to be regulated that would enact a development moratorium in those areas. If Council expands the scope of this project, another public meeting will be held at a future date.
  - A fourth ordinance is being considered that would appropriate funding to support this project.
- The NRAB was asked to give feedback on the project and their preference of the three ordinances.
- Discussion
  - Kevin - **Q** - Can you explain the advantages of doing these projects one at a time or all at once? **A** - A limited scope would have more concentrated engagement and expedite the process. Doing projects sequentially could add confusion to the community, and may not capitalize on engaging the same stakeholders simultaneously.
  - Dawson - **Q** - You said you have discussed this with 30 other communities, in those conversations have you discussed the timing of doing the projects one at a time or all at once? **A** - Yes, we discussed this and there were mixed opinions. One disadvantage to regulating everything is that many communities don't end up using the regulations. Some communities even expressed there were times they should have used them but forgot they had them because it had been years since adopting them and never using them.
  - Dawson - **Q** - What kind of conversations are you having on how to transparently communicate to the community so they understand this complicated project with three options? **A** - Conversations with the community will begin with the public hearing. We are hiring a consultant to craft our future engagement with the public.
  - Dawson - **Q** - Can you explain how the public hearing will explain this project? **A** - It will be a presentation of the various considerations, options,





October 19, 2021



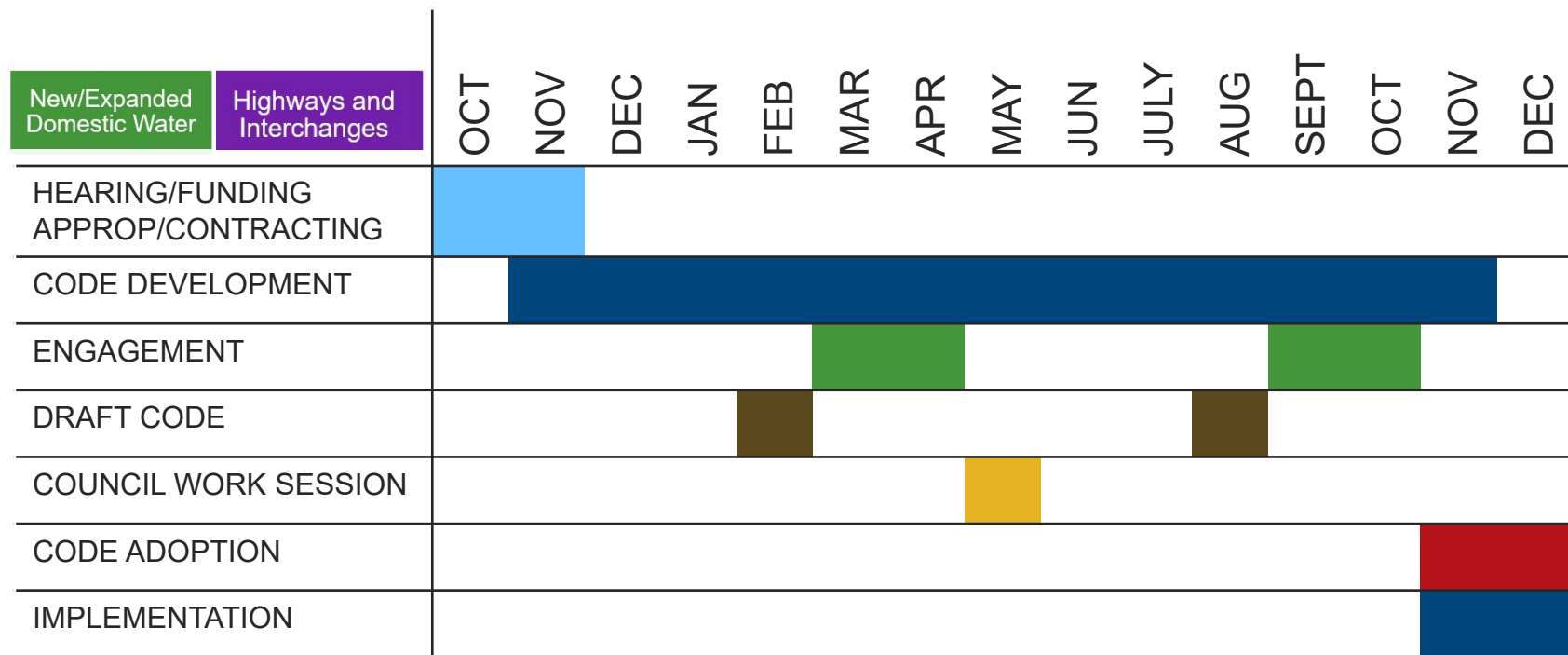
**1041 Regulations**  
Paul Sizemore & Kelly Smith

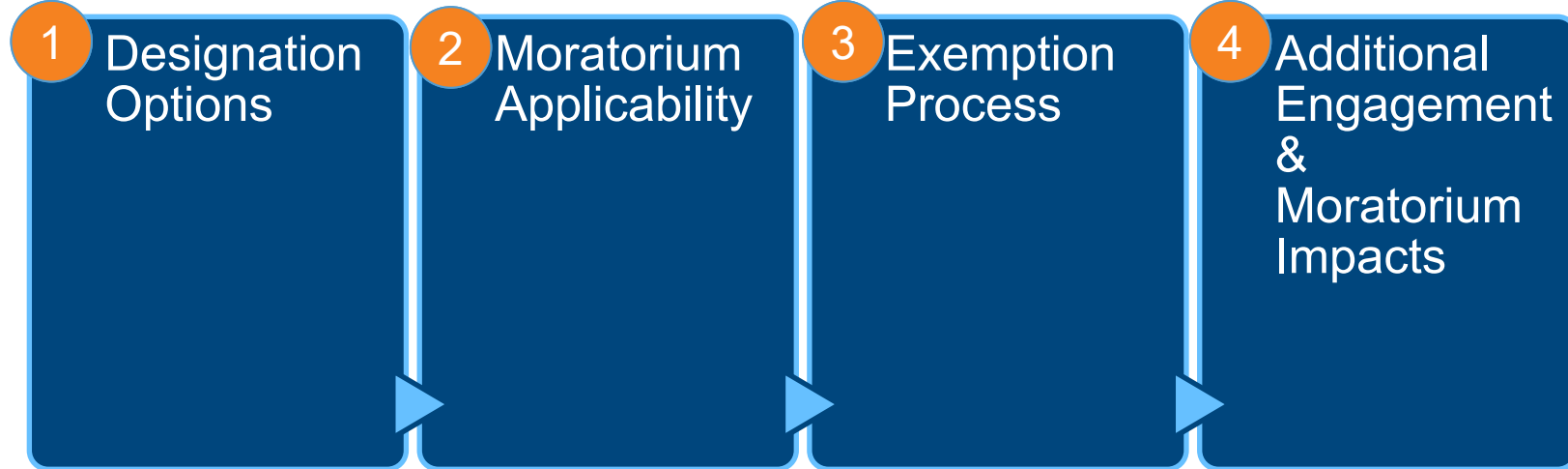
## Project Background

2021



# Project Timeline







New/Expanded  
Domestic Water

Highways and  
Interchanges

- 1. A moratorium is only required at the time the City designates activities or areas of statewide interest.***
- 2. The City could designate activities or areas any time during the development of regulations.***

# Designation Options

2021			2022											
Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Moratorium Duration: 1 year														
<b>OPTION 1:</b> <b>Designate Now</b> <ul style="list-style-type: none"> <li>Highest certainty for City until regulations are adopted</li> <li>Lowest certainty for water providers, developers, regional partners</li> <li>Longest moratorium</li> <li>Potential project delays at regional scale</li> <li>Consistent with First Reading</li> </ul>								<b>OPTION 2:</b> <b>Designate @ Draft</b> <ul style="list-style-type: none"> <li>Known regulatory framework</li> <li>Opportunity to further engage</li> <li>Cuts moratorium in half</li> <li>Allows projects to move forward for 6 mos</li> </ul>						
								<b>OPTION 3:</b> <b>Designate @ Adoption</b> <ul style="list-style-type: none"> <li>No moratorium</li> <li>Lowest certainty for City until regulations are adopted</li> <li>Highest certainty for developers, water providers, regional partners</li> </ul>						

## 2 Moratorium Applicability: First Reading

### Engagement & Impacts

Water/Sewer  
Providers

City Utilities

### Applies To:

- SPAR Projects
- >12" Pipe Size
- Not Tied To Dev.
- Not Maintenance/ Replacement

### Engagement & Impacts

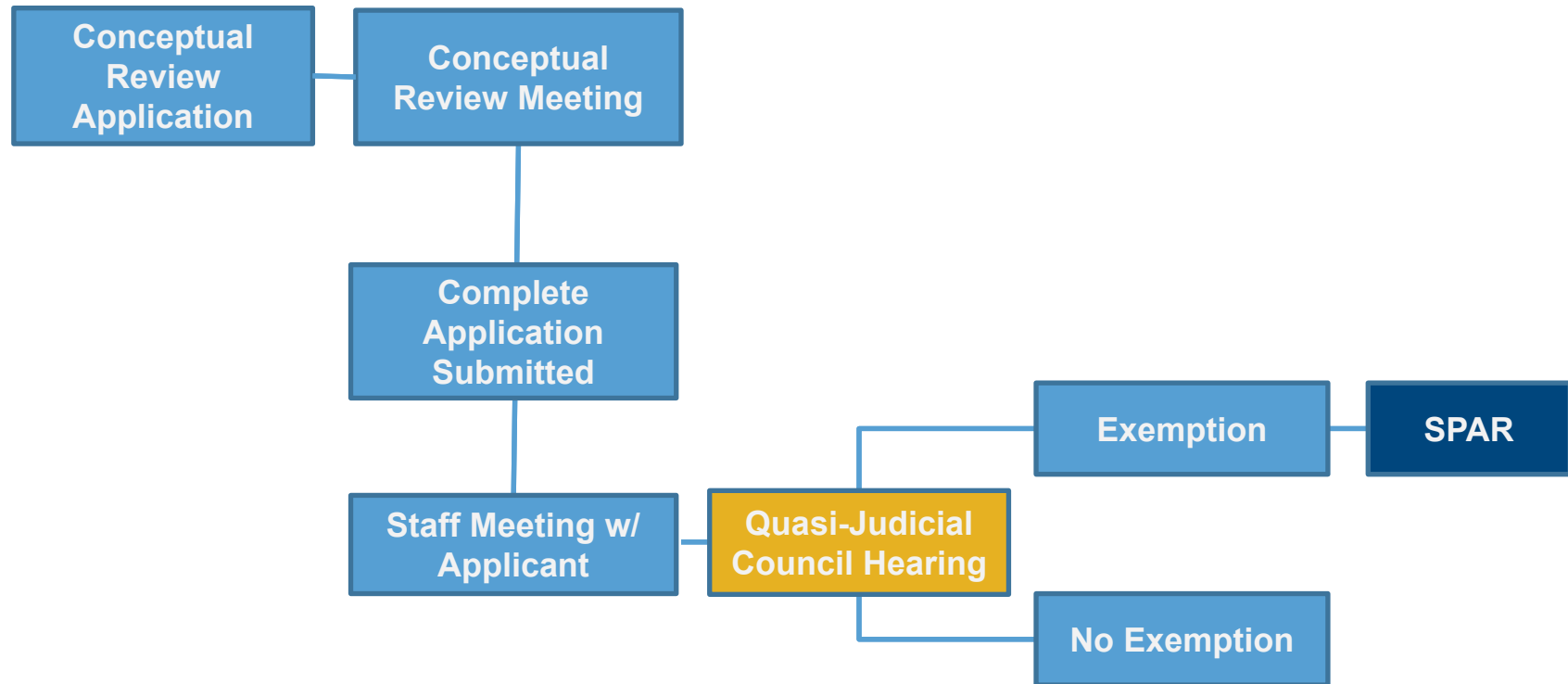
Water/Sewer  
Providers

City Utilities

### Applies To:

- SPAR Projects
- >30'Easement
- >20'Easement Adjacent to Existing
- Not Tied To Dev.
- Not Maintenance/ Replacement

## 3 Exemption Process



1. The potential for the project to result in **significant adverse impacts** that could otherwise be mitigated through a binding review process; or
2. The project **meaningfully addresses an important community need** and delaying the project until the moratorium is terminated would result in substantial hardship to the community.

PROJECT	UNKNOWNNS	KNOWNNS
<b>NISP</b> <ul style="list-style-type: none"> <li>Goal: break ground in 2023</li> <li>60' easement</li> <li>32"-36" pipe</li> <li>Crosses several City-owned Natural Areas and aquatic resources</li> </ul>	<ul style="list-style-type: none"> <li>Unknown construction timing and sequencing</li> <li>Still waiting for ROD from Corps</li> <li>Not started securing easements in FTC</li> </ul>	<ul style="list-style-type: none"> <li>Obtained 1041 Permit from Larimer County</li> <li>Can secure easements on private property</li> <li>10 months to construct (in FTC)</li> <li>Moratorium would prevent securing easements on City-owned land</li> <li>Moratorium would prevent City-issued permits</li> </ul>



## Engagement & Moratorium Impacts

PROJECT	UNKNOWNNS	KNOWNNS
<b>NEWT 3</b> <ul style="list-style-type: none"> <li>• Goal: break ground in 2023</li> <li>• 50' easement;</li> <li>• 42" dia pipe</li> <li>• Does not cross City-owned natural areas or aquatic resources</li> </ul>	<ul style="list-style-type: none"> <li>• Still planning and designing</li> <li>• Impacts of Larimer County 1041 regs (in drafting)</li> <li>• Need Weld County approval</li> <li>• Need Larimer County 1041 permit</li> <li>• Need Corps approval</li> <li>• Need SHPO approval</li> <li>• Need easements</li> <li>• New City regulations may impact design</li> <li>• Uncertainty for development, school site planning, bond repayment schedules</li> </ul>	<ul style="list-style-type: none"> <li>• Can work with the Corps on potential wetlands impacts (Boxelder Creek)</li> <li>• Can work on environmental, cultural/ historic resource documentation</li> <li>• Can secure easements on private property</li> <li>• Can develop detailed construction drawings</li> <li>• Will take 10 months to construct</li> <li>• Moratorium would prevent City-issued permits</li> </ul>

## Engagement & Moratorium Impacts

PROJECT	UNKNOWNNS	KNOWNNS
REGIONAL PROJECTS	<ul style="list-style-type: none"><li>• Uncertainty to water providers</li><li>• May not have capacity to support development if NEWT 3 or NISP cannot be constructed</li></ul>	<ul style="list-style-type: none"><li>• North Weld County Water District imposed moratorium on taps for new buildings</li></ul>

# Designation Options

2021			2022											
Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Moratorium Duration: 1 year														
<b>OPTION 1:</b> <b>Designate Now</b> <ul style="list-style-type: none"> <li>• Highest certainty for City until regulations are adopted</li> <li>• Lowest certainty for water providers, developers, regional partners</li> <li>• Longest moratorium</li> <li>• Potential project delays</li> <li>• Consistent with First Reading</li> </ul>								<b>OPTION 2:</b> <b>Designate @ Draft</b> <ul style="list-style-type: none"> <li>• Known regulatory framework</li> <li>• Opportunity to further engage</li> <li>• Cuts moratorium in half</li> <li>• Allows projects to move forward for 6 mos</li> </ul>						
								<b>OPTION 3:</b> <b>Designate @ Adoption</b> <ul style="list-style-type: none"> <li>• No moratorium</li> <li>• Lowest certainty for City until regulations are adopted</li> <li>• Highest certainty for developers, water providers, regional partners</li> </ul>						

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

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

WHEREAS, pursuant to C.R.S. Section 24-65.1-401, the City may designate specified areas and activities to be of state interest after holding a public hearing and considering the intensity of current and foreseeable development pressures, specifying the boundaries of any proposed area, state reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner; and

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

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

(1) Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems; and

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

and

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

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

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

Section 2. That City Council, in consideration of the information provided for and at the public hearing, hereby designates the site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems, as the term domestic water and sewage treatment system is defined in Sections C.R.S. Sections 24-65.1-104(5) and 25-9-102, and set forth in Exhibit "A" attached hereto and incorporated herein, as an activity of state interest with the following findings:

- (1) Such designation is justified by the current and foreseeable development pressures related to major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems;
- (2) Such designation shall apply to major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems located partially or entirely within the boundaries of the City;
- (3) This activity is of state interest because the site selection and construction of domestic water and sewage treatment systems occurs throughout Colorado and can negatively impact the environment and wildlife resources, and the public health, safety, and welfare of the communities where they are located. While this activity is of state interest, it is ideally suited for local regulation in the communities where such systems are located because of the local understanding of the unique local conditions and needs;
- (4) Uncontrolled development of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems would cause adverse impacts within the City to the public health, safety, and welfare, the environment and wildlife resources, and the City's operations and projects;
- (5) The coordinated development and regulation of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems would mitigate within the City the negative impacts on the public health, safety, and welfare, the environment and wildlife resources, and the City's operations and projects, that would be caused by uncontrolled development; and
- (6) Such designation is in the best interests of the residents of Fort Collins.

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

- (1) Such designation is justified by the foreseeable development pressures related to the site selection of arterial highways and interchanges and collector highways;
- (2) Such designation shall apply to the site selection of arterial highways and interchanges and collector highways located partially or entirely within the boundaries of the City;
- (3) This activity is of state interest because the site selection of arterial highways and interchanges and collector highways occurs throughout Colorado and can negatively impact the environment and wildlife resources and the public health, safety, and welfare of the communities where they are located. While this activity is of state interest, it is ideally suited for local regulation in the communities where such highways and interchanges are located because of the local understanding of the unique local conditions and needs;
- (4) Uncontrolled development of the site selection of arterial highways and interchanges and collector highways would cause significant adverse impacts within the City to the public health, safety, and welfare, the environment and wildlife resources, and the City's operations and projects
- (5) The coordinated development and regulation of the site selection of arterial highways and interchanges and collector highways would mitigate the negative impacts within the City to the public health, safety, and welfare, the environment or wildlife resources, and the City's operations and projects that would be caused by uncontrolled development; and
- (6) Such designation is in the best interests of the residents of Fort Collins.

Section 4. That with regards to the activities designated in Section 2 ("Water and Sewer System Activity") and Section 3 ("Highway Activity") (collectively, the "Activities"), no person shall conduct the Activities, as further defined below, unless otherwise specified in this Section 4 until December 31, 2022, or until City Council has finally determined and adopted guidelines for the administration of the Activities pursuant to C.R.S. Section 24-65.1-101 et seq. This moratorium ("Moratorium") on the conduct of the Activities is authorized pursuant to C.R.S. Section 24-65.1-404(4) and the City's power to impose a moratorium on development activity pursuant to its home rule powers granted under Article XX of the Colorado Constitution. The Moratorium shall go into effect on the effective date of this Ordinance.

- (1) Water and Sewer System Activity subject to the Moratorium shall be projects that:
  - (i) Meet the term domestic water and sewage treatment system as defined in C.R.S. Section 24-65.1-104(5), and set forth in Exhibit "A"; and



- (ii) Consist of pipelines designed for transmission of treated or untreated water or sewage that are 12-inch diameter or larger or designed for transmission of sewage that are 15-inch diameter or larger.

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

- (2) The following projects are not ~~do not qualify as Water and Sewer System Activity~~ subject to the Moratorium on Water and Sewer System Activity:

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

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

- (iii) Projects to upgrade existing water and sewer facilities that are required maintenance or otherwise required by federal, state or Larimer County regulations, including repairing and/or replacing old or outdated equipment, or installing new equipment, provided the improvements do not expand levels of service beyond an increase to the next standard incremental pipeline size, and provided further that the upgrade does not alter the location of the existing facility beyond the existing easement or right-of-way; and

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

- ~~(iv) Any project that the City Council determines by adopted ordinance after a quasi-judicial hearing, and review and analysis by City staff, to be unlikely to result in significant adverse impacts within the City to the public health, safety, and welfare, the environment and wildlife resources, and the City's operations and projects. Applications for review under this section must be submitted to the Director of Community Development and Neighborhood Services, as defined in the Land Use Code.~~

- (3) Highway Activity subject to the Moratorium shall be projects that meet the terms arterial highway and collector highway as such terms are respectively defined in C.R.S. Sections 24-65.1-104(3) and (4), and set forth in Exhibit "A", and interchanges associated with arterial highways. The Moratorium shall apply to

projects that have completed or are undergoing Site Plan Advisory Review pursuant to the Land Use Code and which meet the terms arterial highway and collector highway.

- (4) Any project that the City Council exempts from the Moratorium on Highway Activity pursuant to Section 5 of this Ordinance is not ~~The following projects do not qualify as Highway Activity~~ subject to the Moratorium.:-

~~Any project that the City Council determines by adopted ordinance after a quasi-judicial hearing, and review and analysis by City staff, to be unlikely to result in significant adverse impacts within the City to the public health, safety, and welfare, the environment and wildlife resources, and the City's operations and projects. Applications for review under this section must be submitted to the Director of Community Development and Neighborhood Services, as defined in the Land Use Code.~~

- (5) The Moratorium shall also apply to the following to the extent any of the following are related to a project subject to the Moratorium:
- (i) The City's acceptance and processing of applications for Site Plan Advisory Review pursuant to the Land Use Code for development that qualifies as one of the Activities;
  - (ii) The acceptance and processing of applications or requests for City permits, including flood plain and encroachment permits; and
  - (iii) The acceptance and processing of applications or requests to acquire City real property or rights therein, including easements.

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

- (1) City Council may exempt projects subject to the Moratorium if it finds that the applicant has established that granting of the exemption would not be detrimental to the public good, and that:
- (i) The project, if reviewed using the procedures specified in the Land Use Code for a Site Plan Advisory Review, would not result in significant adverse impacts that would be mitigated through a binding City review process; or
  - (ii) The project would meaningfully address, or assist in addressing, an important community need specifically defined and described in City Plan or a City Council adopted policy, ordinance, or resolution and delaying the project until the moratorium is terminated would result in substantial hardship to the community in realizing the benefit of the project in addressing, or assisting in addressing, the community need.

- (2) Any project that Council exempts from the Moratorium pursuant to this Section must have its complete application accepted by the Community Development and Neighborhood Services Department at least sixty days prior to the termination of the Moratorium and such applications will be subject to the applicable Land Use Code standards in effect at the time of acceptance. Applications accepted within the period sixty days before the termination of the Moratorium or after the termination of the Moratorium will be subject to the Land Use Code standards in effect at the time of acceptance including 1041 regulations.
- (3) Applications for Council exemption review pursuant to this Section must be provided to the Director of Community Development and Neighborhood Services ("Director").
- (i) Each application shall contain all information and materials that the Director determines are necessary to allow City staff to review the project and make a recommendation to City Council and for City Council to make its determination on the exemption.
  - (ii) The Director will charge a fee to recover the estimated staff time in processing and reviewing the application to be paid upon submittal of the application.
  - (iii) City staff will review the application and provide a recommendation to City Council.
- (4) City Council will make its determination whether to grant an exception after holding a quasi-judicial public hearing.
- (i) The City Clerk will schedule the hearing for a date within sixty days of receiving notice from the Director accepting a complete application for exemption, unless Council acts by motion or resolution to extend the time for that hearing.
  - (ii) Notice for the public hearing will occur pursuant to Land Use Code Section 2.2.6 using a minimum notice radius of 1000 feet.
  - (iii) The City Council decision to grant or deny an exception request must be memorialized in an adopted ordinance.

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

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Mayor

ATTEST:

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Interim City Clerk

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

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Mayor

ATTEST:

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Interim City Clerk

ORDINANCE NO. 123, 2021  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROPRIATING PRIOR YEAR RESERVES TO  
SUPPORT COMPLETION OF THE 1041 REGULATIONS PROJECT

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

~~WHEREAS, City Council held a public hearing to designate water and sewer system and highway activities as matters of state interest which requires City staff to research and draft regulations for City Council adoption; and~~

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins by providing funding for consultants and other resources to assist City staff in researching and drafting regulations and serves the public purpose of enabling the effective creation of development requirements and standards pursuant to the City’s 1041 powers for the benefit of the residents of Fort Collins; and

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

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

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

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

Section 2. That there is hereby appropriated from prior year reserves in the General Fund the sum of **FIFTY THOUSAND DOLLARS (\$50,000)** for expenditure from the General Fund to support completion of the 1041 regulations project.

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

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Mayor

ATTEST:

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Interim City Clerk

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

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Mayor

ATTEST:

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Interim City Clerk