

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

- (1) Water and Sewer System Activity subject to the Moratorium shall be projects that:
 - (i) Meet the term domestic water and sewage treatment system as defined in C.R.S. Section 24-65.1-104(5), and set forth in Exhibit "A";
 - (ii) Consist of pipelines designed for transmission of treated or untreated water or sewage that are contained within new permanent easements greater than 30 feet in width, or within new permanent easements greater than 20 feet in width that are adjacent to existing easements, or will use two or more parallel lines that are within 120 square inches of each other when viewed in cross-section; and

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

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

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

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

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

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

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

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

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

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

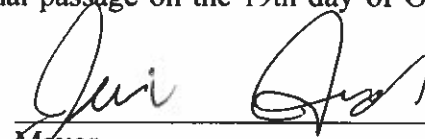
- (i) The City's acceptance and processing of applications for Site Plan Advisory Review pursuant to the Land Use Code for development that qualifies as one of the Activities;
- (ii) The acceptance and processing of applications or requests for City permits, including flood plain and encroachment permits; and
- (iii) The acceptance and processing of applications or requests to acquire City real property or rights therein, including easements.

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

- (1) City Council may exempt projects subject to the Moratorium if it finds that the applicant has established that granting of the exemption would not be detrimental to the public good, and that:
 - (i) The project, if reviewed using the procedures specified in the Land Use Code for a Site Plan Advisory Review, would not result in significant adverse impacts that would be mitigated through a binding City review process; or
 - (ii) The project would meaningfully address, or assist in addressing, an important community need specifically defined and described in City Plan or a City Council adopted policy, ordinance, or resolution and delaying the project until the moratorium is terminated would result in substantial hardship to the community in realizing the benefit of the project in addressing, or assisting in addressing, the community need.
- (2) Any project that Council exempts from the Moratorium pursuant to this Section must have its complete application accepted by the Community Development and Neighborhood Services Department at least sixty days prior to the termination of the Moratorium and such applications will be subject to the applicable Land Use Code standards in effect at the time of acceptance. Applications accepted within the period sixty days before the termination of the Moratorium or after the termination of the Moratorium will be subject to the Land Use Code standards in effect at the time of acceptance including 1041 regulations.
- (3) Applications for Council exemption review pursuant to this Section must be provided to the Director of Community Development and Neighborhood Services ("Director").
 - (i) Each application shall contain all information and materials that the Director determines are necessary to allow City staff to review the project and make a recommendation to City Council and for City Council to make its determination on the exemption.

- (ii) The Director will charge a fee to recover the estimated staff time in processing and reviewing the application to be paid upon submittal of the application.
 - (iii) City staff will review the application and provide a recommendation to City Council.
- (4) City Council will make its determination whether to grant an exception after holding a quasi-judicial public hearing.
- (i) The City Clerk will schedule the hearing for a date within sixty days of receiving notice from the Director accepting a complete application for exemption, unless Council acts by motion or resolution to extend the time for that hearing.
 - (ii) Notice for the public hearing will occur pursuant to Land Use Code Section 2.2.6 using a minimum notice radius of 1000 feet.
 - (iii) The City Council decision to grant or deny an exception request must be memorialized in an adopted ordinance.
 - (iv) Any exception granted by City Council under this Section 5 would not be subject to later adopted 1041 regulations except as stated in Section 5(2).

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



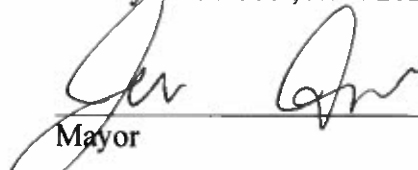
 Mayor

ATTEST:

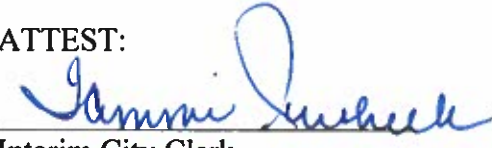

 Interim City Clerk



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



 Mayor

ATTEST:


 Interim City Clerk



EXHIBIT “A”

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

“Domestic water and sewage treatment system” means a wastewater treatment facility, water distribution system, or water treatment facility, as defined in section 25-9-102(5), (6), and (7), C.R.S., and any system of pipes, structures, and facilities through which wastewater is collected for treatment. (Section 24-65.1-104(5), C.R.S.)

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

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

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

“Collector highway” means a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers and constructed under guidelines and standards established by, or under the supervision of, the department of transportation. “Collector highway” does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government. (Section 24-65.1-104(4), C.R.S.)