

DATE: July 27, 2021

STAFF: Kelly Smith, Senior City Planner

WORK SESSION ITEM

City Council

SUBJECT FOR DISCUSSION

Discuss Approaches to Regulating Areas and Activities of State Interest Pursuant to Powers Established in State Law Commonly Referred to as 1041 Powers.

EXECUTIVE SUMMARY

The purpose of this item is to receive direction from Council on the project scope for developing 1041 Regulations, and to request an off-cycle appropriation to support project completion.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. Do Councilmembers support one of the following options to develop 1041 regulations?

Option #1: Regulations focused on immediate development pressures.

Option #2: Regulations based on both immediate and potential future development pressures.

2. Do Councilmembers support a mid-cycle appropriation to expedite project initiation?

BACKGROUND / DISCUSSION

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

In terms of policy alignment, both City Plan and the Strategic Plan identify policies and objectives that aim to direct development in a way that ensures compatibility between adjacent land uses, minimize infrastructure and resource needs, and protect historic and natural resources. Currently, the City's Land Use Code provides a limited local review process for public agency projects. As such, adopting 1041 regulations would offer the City greater authority over public development projects that qualify as areas or activities of statewide interest per House Bill 74-1041 and help the City achieve its stated policy objectives.

Since the May 4th Council meeting, staff has performed extensive research on other Colorado communities that have adopted 1041 regulations to better understand the scope, process, resource needs and timeline for developing and implementing this permitting program. An overview of 1041 regulations, current City codes, development trends, and lessons learned from other communities are provided below, followed by potential options for next steps in developing 1041 regulations for Council discussion.

HOUSE BILL 74-1041

The purpose of 1041 powers is to give local governments control over certain 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 (HB 1041), that created the 1041 powers in 1974, and the statutes regarding 1041 powers are also referred to as the *Areas and Activities of State Interest Act* ("AASIA"). To exercise 1041 powers, a local government must designate the areas or activities of state interest and adopt guidelines for the administration of the designated areas or activities, all pursuant to statutory procedures and limitations.

Areas of State Concern include:

1. **Mineral Resource Area:** Any area in which there has been “significant mining activity in the past or present, mining development is planned or in progress, or mineral rights are held by mineral patent or valid mining claim with the intention of mining.”
2. **Natural Hazard Area:** “an area containing or directly affected by a natural hazard” (i.e. geologic, wildfire, flood, radioactivity, seismic).
3. **Areas Containing, or Having Significant Impact on Historical, Archaeological or Natural Resources of Statewide Importance.**
 - Historical or archaeological resources of statewide importance means “resources which have been officially included in the national register of historic places, designated by statute, or included in an established list of places compiled by the state historical society.”
 - Natural resources of statewide importance “is limited to shorelands of major, publicly owned reservoirs and significant wildlife habitats in which the wildlife species, as identified by the division of parks and wildlife of the department of natural resources, in a proposed area could be endangered.”
4. **Areas Around Key Facilities:** Development may have a material effect upon the key facility or the surrounding community. Key facility means airports; major facilities of a public utility; interchanges involving arterial highways; rapid or mass transit terminals, stations, and fixed guideways.

AASIA defines **Activities of State Concern** as the following:

1. Site selection and construction of water supply and treatment systems and major extension of existing domestic water and treatment systems.
2. Site selection and development of solid waste disposal sites.
3. Site selection of airports.
4. Site selection of rapid or mass transit terminals, stations and fixed guideways.
5. Site selection of arterial highways and interchanges and collector highways.
6. Site selection and development of new communities: new community means the major revitalization within existing municipalities or the establishment of urbanized growth centers in unincorporated areas.
7. Efficient utilization of municipal and industrial water projects.
8. Conduct of nuclear detonations.
9. The use of geothermal resources for the commercial production of electricity.

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. The designation of areas and activities may occur only after a noticed public hearing where Council must consider, at a minimum, the intensity of current and foreseeable development pressures. Council must specify 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, and the advantages of developing such area or activity in a coordinated manner. The City may adopt guidelines, and regulations for carrying out such guidelines, for administering designated areas and activities that are more stringent than the criteria listed in the applicable state statutes.

Once the City holds a public hearing and initially 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 the City has finally determined the designation and guidelines. In other words, a moratorium goes into effect on development within the initially designated area or on the initially designated activity until the City makes a final determination on the designation and the applicable guidelines.

To the extent a person proposes to engage in development in an area of state interest or conduct and activity of state interest that the City has not previously designated and for which guidelines have not been adopted, the City

is authorized to hold a public hearing to designate such area or activity and to adopt guidelines under which to review the proposal. In other words, the City has an opportunity to exercise 1041 powers over proposals for areas and activities not previously anticipated as requiring regulations.

CURRENT CITY REGULATIONS

The City's Land Use Code regulates private and public projects differently. For private development projects, a variety of codified mechanisms are in place that are framed around a project's proposed land use and the site's zoning designation. Depending on project complexity and potential impacts, a neighborhood meeting may be required and the decision maker could be the Director, a Hearing Officer, Planning and Zoning Commission or Council. Decision makers have broad authority to place conditions of approval on development applications to meet the intent of the code. A project may require several submittals before and after a hearing, and there is no specific time frame by which the City must approve a project. Land Use Code standards cover several aspects of site design that require multiple City departments to review and approve. These design standards include, but are not limited to, landscaping, building standards, tree stocking, water conservation, environmental protection, exterior lighting, building setbacks, road design, pedestrian connectivity and utility infrastructure.

The City's Land Use Code regulates public projects differently where review criteria and approval processes are dictated by Colorado State law. Below is a summary of relevant codes and review processes that are applied to public projects.

Division 2.16 - Site Plan Advisory Review (SPAR)

The City's current authority in regulating public projects is based on Colorado State law, which creates a limited local review process to assess the "character, location and extent" for public buildings or structures (See CRS §31-23-209). In other words, the review criteria (character, location and extent) replace the design and zoning standards found in the Land Use Code. The submittal requirements, review and approval processes are outlined in the Land Use Code and referred to as the "Site Plan Advisory Review," or SPAR. A SPAR applies to any public building or structure that is a part of the development, and review is advisory in scope.

The SPAR process has similar steps to other development review proposals, including a neighborhood meeting, review meetings with City staff, and a public hearing with the Planning and Zoning Commission. Unlike other development projects, the SPAR process has a strict timeline. Once an application is received, the proposal must be heard by the Planning and Zoning Commission within 60 days, unless the applicant voluntarily extends or waives that deadline.

The Planning and Zoning Commission can approve or disapprove the application. Unlike other development projects, the Commission cannot apply conditions of approval to the application, and if the Commission disapproves the proposal the applicant's governing body can overrule the Commission's decision with a 2/3 vote of its membership.

Division 2.17 - City Projects

While the SPAR process applies to all public projects, Section 2.17 of the City's Land Use Code requires that City projects be processed according to zoning and land use standards and be subject to review by the Planning and Zoning Commission in all instances. This distinction is important as some (not all) City projects that may fall under 1041 Authority are already subject to the City's land use authority. Such projects would include the development or expansion of water/wastewater treatment facilities; however, any associated pipeline infrastructure may be exempt from review (see Division 5.1.2 description below).

Division 5.1.2 - Definitions - Development

Based on the Land Use Code definition of "Development," a limited number of projects are exempt from City development review. Exempt projects include utility, City, and Downtown Development Authority (DDA) projects located within existing public easements or rights-of-way, including water/wastewater pipeline distribution systems and roadway maintenance or improvement projects. Depending on how 1041 regulations are crafted, some projects that may qualify as an activity of statewide interest may otherwise be exempt from development review.

Below is a list of project types currently exempted from review that may be relevant to the 1041 regulation discussion:

- Work by the City, road agency, or railroad company to maintain or improve a roadway or railroad track, if the work is carried out on land within the boundaries of the right-of-way, or on land adjacent to the right-of-way, if the work is incidental to the project within a right-of-way.
- Work by the City or any public utility for the purpose of inspecting, repairing, renewing or constructing, on public easements or rights-of-way, any mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks.

Staff Analysis

While 1041 Authority could apply to private development, it is staff’s perspective that the Land Use Code provides sufficient tools for regulatory authority. However, 1041 regulations offer stronger authority over public projects that qualify as an area or activity of statewide interest. For example, unlike SPAR the 1041 permitting program would not impose a constrained 60-day review period; the City’s role would be regulatory and not advisory in scope; conditions of approval could be placed on an application by the Decision Maker; and the Decision Maker’s determination could not be overturned by the applicant’s governing body.

Depending on how 1041 regulations are drafted, potential positive outcomes may include, but are not limited to:

- Role is not advisory
- Influence project location and design
- Authority to deny or revoke permit
- Enforcement and Penalties
- Financial securities for impacts and restoration requirements
- Inspections, even on private property
- Equity/benefit analysis requirements (environmental and socioeconomic)

CURRENT DEVELOPMENT PRESSURE

To better understand the current development pressure the City is facing and how 1041 regulations could provide stronger land use authority over public projects, staff evaluated projects reviewed through the SPAR process and assigned an activity of statewide interest to each project where applicable.

Over the past 11 years, the City has processed a total of 36 SPAR applications; of those 32 applications could not be linked to an activity of statewide interest. Twenty-nine 29 applications were from educational institutions, such as Poudre School District, Colorado State University and Front Range Community College, that proposed either new buildings or modifications to existing buildings. Two applications were from Larimer County related to jail campus expansions, and one was from Poudre Valley Regional Electric Authority to construct a concrete-block wall for screening purposes.

The remaining four applications were processed within the past 9 months and include three water conveyance projects of varying sizes and an Interstate-25 Port of Entry redesign. The table below provides further detail about each project, when it went to hearing, the outcome and staff analysis about the process.

Projects Reviewed Under SPAR

Project	Activity	Notes
Colorado State University Raw Water Utility Expansion (Hearing: October 2020, Approved)	<ul style="list-style-type: none"> • Site Selection and Construction of Water Supply and Treatment Systems 	<ul style="list-style-type: none"> • 1500 LF of 14” dia steel pipe • Bored under natural resources, street and trails • Buffered bore pits from natural resources • City staff unsure if this project could be regulated under 1041 since applicant is public school • Staff feels SPAR process or an administrative approval process would have

Project	Activity	Notes
		been sufficient
Fort Collins Loveland Water District: Golden Currant Water Line (Hearing: Dec 2020, Approved)	<ul style="list-style-type: none"> • Site Selection and Construction of Water Supply and Treatment Systems 	<ul style="list-style-type: none"> • Replace 5,000 LF of existing leaky pipe; Pipe is 20" in dia., connects to existing tank • Applicant worked with HOA and Natural Areas on pipeline location • Provided documentation of existing cultural and natural resources • Staff feels SPAR process or an administrative approval process would have been sufficient
Colorado Dept of Transportation: Port of Entry (Hearing: Jan 2021, Approved)	<ul style="list-style-type: none"> • Location of Highway and Interchanges 	<ul style="list-style-type: none"> • New commercial truck entry stations · Required land dedication from Natural Areas Department • Encroaches into wetland buffer, but no direct impacts to wetlands • In hindsight, staff would have liked more information on alternatives evaluation since project impacted Natural Areas
Northern Integrated Supply Project (Hearing: June 2021, Disapproved)	<ul style="list-style-type: none"> • Site Selection and Construction of Water Supply and Treatment Systems 	<ul style="list-style-type: none"> • 18,000 LF of buried pipeline (32"-36" dia) · Water intake structure · Grading control structure • Impacts to wetlands, riparian forest, Boxelder Creek, Dry Creek, Lake Canal • Staff felt SPAR was inadequate and resulted in insufficient information to determine extent of impacts to cultural or historic resources, city rights-of-way, environmental resources, and city utilities

Potential Future Projects (within 10-year horizon)

Staff performed preliminary research on potential projects that could occur within the next ten years. Staff researched applications submitted for Conceptual Review, the first stage in the development review process that occurs prior to a formal SPAR application submittal. Only one project processed under Conceptual Review qualified as an activity of statewide interest and was reviewed in 2019. The project is referred to as NEWT 3 Pipeline and is a regional water transmission pipeline project that spans through the City to deliver water to Weld County and eastern Larimer County. Staff anticipates a formal SPAR application being submitted in the near term (within 1-3 years).

Staff also reached out to City transportation engineers and planners, as well as CDOT, to understand potential future transportation projects. Only one project was mentioned as potentially occurring within the 10-year horizon (Mulberry/I-25 Interchange). This project is currently unfunded, therefore it is less clear when to anticipate a development proposal. Information about both projects is included in the table below.

Project	Activity	Notes
NEWT 3 Water Pipeline (Potential Future Project: Conceptual Review Meeting Jan 2020)	<ul style="list-style-type: none"> • Site Selection and Construction of Water Supply and Treatment Systems 	<ul style="list-style-type: none"> • 28,300 LF of buried pipeline (TBD dia) • Crosses Boxelder Creek, wetlands, Cooper Slough, raptor nests
CDOT Mulberry/I25 Interchange (Potential Future Project)	<ul style="list-style-type: none"> • Location of Highway and Interchanges 	<ul style="list-style-type: none"> • Unknown

Aside from these two projects, staff is unaware of other potential projects that may fall under 1041 regulations but acknowledges that there could be others, especially in the much distant future (>10years), such as regional mass transit projects and major utility projects.

1041 REGULATIONS IN OTHER COMMUNITIES

Since the May 4, 2021 City Council discussion on 1041 regulations, staff has reached out to thirty-five local communities to better understand which communities have adopted 1041 regulations and the process they took to develop, adopt and implement regulations. Staff initially focused on peer communities with populations greater than 50K residents; however the majority of municipalities that reported as having adopted 1041 regulations in the 2015 Colorado Land Use Survey (posted on the Department of Local Affairs website) have not actually adopted them. Another constraint encountered during this research is that most communities that have adopted regulations did so nearly twenty years ago, so little is known about the process taken and resources that were needed to develop and adopt regulations. Given the limited number of municipalities that have adopted 1041 regulations, staff broadened its research to include both counties and smaller municipalities. **(Attachment 1)**

In general, staff found that the process to develop, adopt and implement regulations is complex and labor intensive, and there are a limited number of experts who specialize in 1041 regulations. Consequently, many communities have liberally borrowed language from regulations in other communities or have hired outside help to support project completion. Depending on the outreach performed and whether regulations were based on those from other communities, timelines to draft and adopt ranged between 6 months to 18 months. Many communities that drafted regulations in-house relied on legal staff to lead the project. The scope of regulations varied, where some communities chose to regulate every activity while others carefully selected activities based on development pressure. Few communities regulate areas of statewide interest. Several communities have updated their regulations multiple times over the years based on lessons learned during permit reviews. Many communities that have adopted regulations have not processed any applications through those regulations.

Other Engagement

During the past month staff also engaged in conversations with City Engineering, City Utilities, Water Providers and Sanitation Districts to better understand initial opportunities and concerns about the City adopting 1041 regulations, and experiences with 1041 permitting processes in other jurisdictions. Staff will continue to engage these stakeholders as regulations are developed. **(Attachment 1)**

Overall, there was concern expressed by Water Providers, and Sanitation Districts over regulations having vague submittal requirements and review criteria. Some representatives stated that vague regulations in other communities have resulted in endless rounds of submittals and project delays. Additionally, vague requirements have led to inconsistencies in interpretations by decision makers during the approval process, where decisions seemed more politically motivated than regulatory in nature. Stakeholders indicated that the 1041 permitting process is also onerous and duplicative of federal and state permitting requirements. Something that could impact the schedule for creation of 1041 regulations is engagement of external agencies which would require significant lead time for outside boards to review and comment on draft regulations.

From a City perspective, the Utilities Department expressed concern over self-regulating projects that have already undergone a formal approval process. All capital projects are reviewed and approved by Council during the budgeting process, and it may not be efficient to require another layer of City review and approval. City Utilities staff are also concerned over delays to projects that have been planned for years.

City Engineering seemed generally supportive, although there were questions over how little the regulations may get exercised. Comments indicated that having more control over access routes and road closures for some CDOT projects could have a positive impact.

OPTIONS FOR COUNCIL CONSIDERATION

Based on the information collected during initial engagement, current staffing levels, and project complexity, staff has prepared two options for Council consideration. Inherent in each option are consulting services to meet an aggressive timeline without compromising project integrity, and balancing this work with other priorities such as Development Review, Oil and Gas Regulations, Nature in the City code updates, site inspections, East Mulberry Plan update, and Land Use/Water Use code and policy updates.

Option #1: Regulate Based on Immediate Development Pressure; \$40K Needed; 10-12 Months to Complete

Staff would schedule a hearing to designate activities based on immediate development pressure. Activities would include:

1. Site selection and construction of water supply and treatment systems
2. Site selection and construction of highways and interchanges

Concurrently, staff would return to Council seeking an off-cycle appropriation for consultant services and secure a contract with a consultant team. The scope of services would include assisting with engagement, researching best practices in other communities, outside legal counsel, and drafting customized regulations to address Fort Collins' needs and priorities.

Option #2: Regulate Based on Immediate and Potential Future Development Pressure; \$60K Needed; 15-18 Months to Complete

Staff would return to Council seeking an off-cycle appropriation for consultant services and secure a contract with a consultant team. The scope of services would include researching other potential development pressures the City might face, researching how areas of statewide interest could help the City achieve policy goals, outside legal counsel, assistance with engagement, and drafting customized regulations to address Fort Collins' needs and priorities. After initial research on development pressure and areas of statewide interest, staff would return to Council with a recommendation for activities and areas to designate, then schedule a hearing to designate those activities. Staff would then begin drafting regulations.

Comparison of Options

OPTION	PROS	CONS
<p>#1: Regulations Based on Immediate Development Pressure</p>	<ul style="list-style-type: none"> • Ensures regulations will likely get used • Other development types unlikely or in distant future • State statutes are flexible and allow more activities and areas to be designated in the future • State statutes allow for moratoriums to be placed on development applications until regulations are adopted or updated • More activities will require additional staff time from multiple City departments with full workplans • Less resources and staff time to develop and adopt to make a meaningful impact 	<ul style="list-style-type: none"> • Not capitalizing on project momentum to create a more comprehensive set of regulations • Would not be immediately prepared if an application comes in at a future date for an activity not regulated
<p>#2: Regulations Based on Immediate and Potential Future Development Pressure</p>	<ul style="list-style-type: none"> • Could address full authority of HB1041 • Will be prepared for all potential development regulations • Capitalizes on consultant help, engagement and project momentum 	<ul style="list-style-type: none"> • Inexperienced in 1041 review and permitting; an iterative process of developing regulations may benefit the City to capitalize on lessons learned • Engagement would require staff time from across the organization and across different industries • May never need the full scope of regulations • More time and staff resources needed

NEXT STEPS

1. Staff is seeking direction on the scope of 1041 Regulations.
 - **Option #1:** Regulations Based on Immediate Development Pressure

- **Option #2:** Regulations Based on Immediate and Potential Future Development Pressure

2. Staff is seeking support for consulting services to expedite project initiation.

ATTACHMENTS

1. Engagement Summary (PDF)
2. Powerpoint Presentation (PDF)

1041 REGULATIONS ENGAGEMENT

Since the May 4, 2021 City Council discussion on 1041 Regulations, staff has personally reached out to thirty-five local communities, different City Departments, regional water providers and local sanitation districts to better understand lessons learned and concerns regarding 1041 regulations.

Peer Communities

Staff initially focused on peer communities with populations greater than 50K residents, however given the limited number of municipalities that have adopted 1041 Regulations staff broadened its research to include both smaller municipalities and counties. Below is a snapshot of information collected and key lessons learned. Of particular note is the majority of municipalities that reported as having adopted 1041 Regulations in the 2015 Colorado Land Use Survey (presented on the Department of Local Affairs website) have not adopted them.

Colorado Communities > 50K Residents

MUNICIPALITY	1041 Regulations		ACTIVITIES/AREAS
	Y	N	
Arvada		X	
Aurora*		X	
Boulder		X	
Broomfield*	-	-	Did not answer requests for information
Castle Rock	-	-	Did not answer requests for information
Centennial	X		<ul style="list-style-type: none"> Location of Airports
Colorado Springs		X	
Commerce City	X		<ul style="list-style-type: none"> Site selection and construction of highways, arterial highways and collector highways; Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and/or Major Extension of Existing Domestic Water and Sewage Treatment Systems; Site Selection and Construction of Major Facilities of a Public Utility.
Denver*		X	
Grand Junction*		X	
Greeley*		X	
Highlands Ranch		X	
Lakewood		X	
Longmont		X	
Loveland		X	
Parker*		X	
Pueblo	X		<ul style="list-style-type: none"> Efficient Utilization of Municipal and Industrial Water Projects; Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and/or Major Extension of Existing Domestic Water and Sewage Treatment Systems; Site Selection and Construction of Major Facilities of a Public Utility.
Thornton*		X	
Westminster		X	

*Communities misrepresented as having adopted 1041 in DOLA's 2015 Colorado Land Use Survey

Communities with 10K-50K Residents

MUNICIPALITY	1041 Regulations		ACTIVITIES/AREAS
	Y	N	
Canon City*		X	
Durango*		X	
Frederick*		X	
Fruita*		X	
Golden	X		<ul style="list-style-type: none"> Site selection of arterial highways and interchanges;

Lafayette*		X	
Louisville	X		<ul style="list-style-type: none"> • Areas around key facilities (arterial highway interchanges); • Geologic hazard areas; • Site selection of arterial highways and interchanges; • Site selection of collector highways.
Steamboat*		X	
Superior	X		<ul style="list-style-type: none"> • Site selection and construction of highways, arterial highways and collector highways • Mineral Resource Areas
Windsor*		X	

*Communities misrepresented as having adopted 1041 Regulations in the 2015 Colorado Land Use Survey

Communities Interviewed and Lessons Learned

Jurisdiction	Key Notes
Boulder County	<ul style="list-style-type: none"> • Adopted in early 1990s; little known about process taken to develop and adopt • Reviewed several applications: <ul style="list-style-type: none"> ○ Electric transmission line ○ Expansion of wastewater treatment plant ○ Highway interchange ○ Water pipeline • Has worked well however looking to update eventually to simplify criteria and potentially exempt smaller projects
LaPlata County	<ul style="list-style-type: none"> • Adopted in 2018 (one of the last counties to adopt 1041 in state) • Spent many years studying adopting regs (over 15 years), adopted a resolution 15 years ago to develop regs but just never did it • 11 months to draft and adopt • 2 FTE (county attorneys) and support from Planning Dept; however required long hours from attorneys • Hired legal assistance to review and develop regulations • Lifted regulations from Arapahoe County • Strongly recommend hiring outside consultant help and not doing in-house due to project complexity • Has not processed an application yet
Summit County	<ul style="list-style-type: none"> • Developed in early 2000s • Hired outside consultant to develop regulations • Unsure the process taken to develop and adopt • Processed less than 10 applications • Worked well for environmental considerations
Larimer County	<ul style="list-style-type: none"> • Adopted regs in early 2000s • Processed under 10 permits • Recommends being very intentional about what regulating as to not overprocess applications • In process of revising (5th revision) <ul style="list-style-type: none"> ○ 6-7 months to revise code ○ Trying to make criteria more specific so not open to interpretation ○ May regulate more activities ○ Hired outside consultant for revision • Anticipates a review of application fee structure next year for all development types • Project review through construction require a huge lift in staff time • Implementation will require several months to put in place different supporting programs
Pueblo County	<ul style="list-style-type: none"> • Adopted in early 2000s • In response to water diversion project proposed by Colorado Springs Utilities • Placed moratorium on all projects that fall under certain activities while developing regulations • Regulated all activities as a precautionary tool • Attorney lifted regulations from Eagle County • No engagement • Took approximately 4-5 months to draft, then two months to adopt and implement

City of Pueblo	<ul style="list-style-type: none"> • Adopted in early 2000s • Updated in 2014 using Pueblo County criteria • Same attorney at Pueblo County wrote updated Pueblo City regulations • Did not engage industry, public or other stakeholders • Attorney and Planning Director met internally and identified activities to regulate • Has NOT processed a permit application • Established criteria for administrative process for projects with Findings of No Significant Impact (FONSI) • Processed 4 applications administratively through FONSI for a solar project on city-owned land leased to solar company; very small-scaled project
Town of Silverthorne	<ul style="list-style-type: none"> • Adopted in early 2000s • Little known about process taken to develop and adopt • Has NOT processed an application
Commerce City	<ul style="list-style-type: none"> • Adopted in early 2000s • Little known about process taken to develop and adopt • Processed two applications: <ul style="list-style-type: none"> ○ Early 2007: Installation and location of a Tri-State Generation & Transmission Assoc. electrical line through City and neighboring jurisdictions. ○ 2020: Regional sewer interceptor planned by Metro Wastewater Reclamation District. <ul style="list-style-type: none"> ▪ In lieu of permit, negotiated an IGA for requirements ▪ The IGA was found to be a great negotiating tool to allow project, avoid time consuming process for applicant, and negotiate terms that benefited community
Superior	<ul style="list-style-type: none"> • Adopted in early 2000s • Little known about process taken to develop and adopt • Has NOT processed an application

OTHER ENGAGEMENT

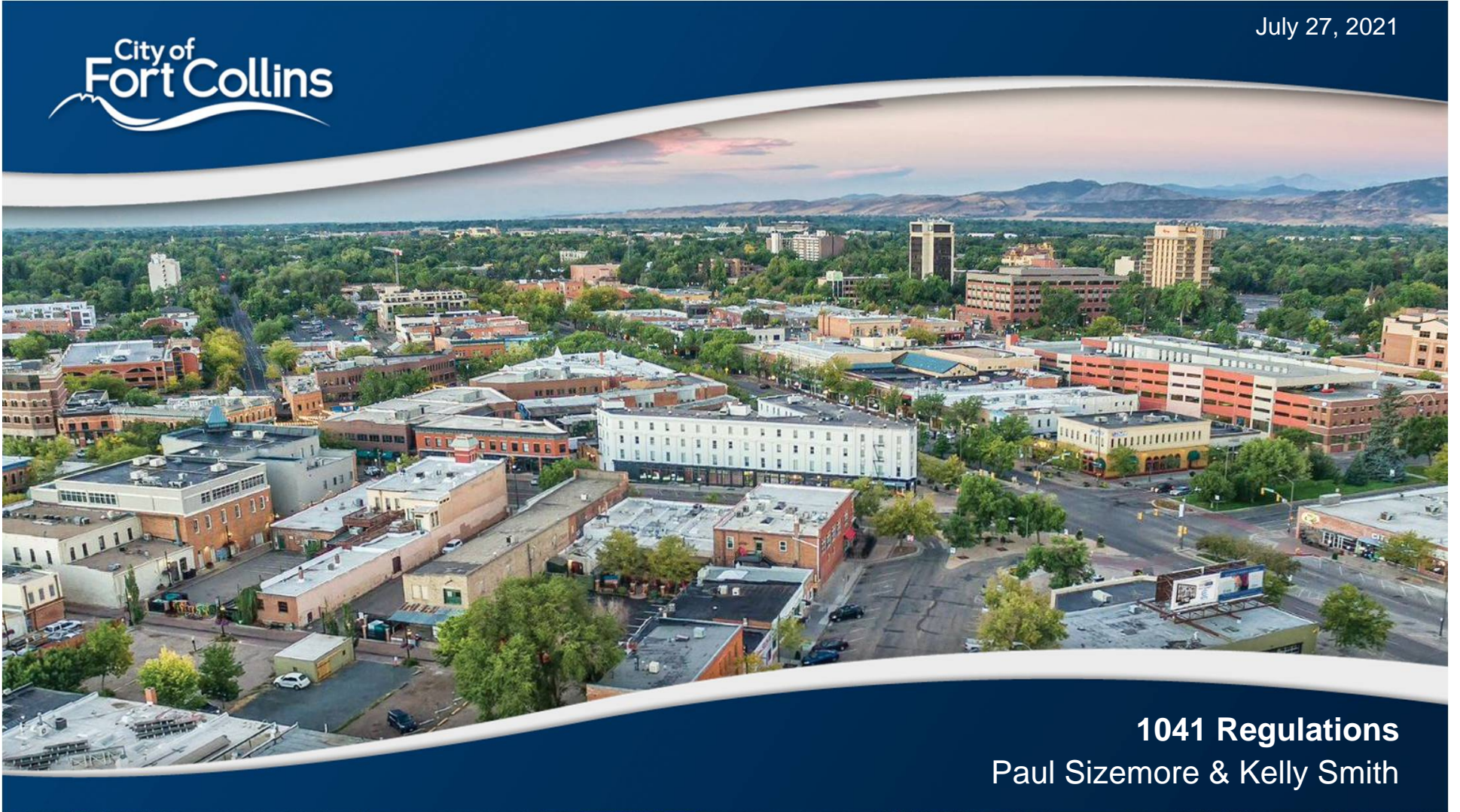
City Utilities, City Engineering, Water Providers, Sanitation Districts Comments and Concerns

Agency/Group	Key Notes
City Utilities	<ul style="list-style-type: none"> • Concern that regulations will result in self-regulating City projects • Capital Projects already approved by City Council during the budget process so don't need another approval process • Definitely need to better understand how permit process may impact scheduled projects that have been planned for several years • Already have project coordination process in place for projects in ROW; hate to duplicate a utility coordination process. One of the first things done when a project comes in is send out to engineering for coordination • Sometimes not value add for planners to review projects that are technical and complex; hard to bring people up to speed • Would like to see very clear regulations so understand requirements, nothing vague
City Engineering	<ul style="list-style-type: none"> • Concern regulating might compromise relationship with CDOT for future funding initiatives • Could focus on interchanges, and locations of Park and Rides, transit facility on 287 • Closure to access routes during I-25 expansion and other projects would have been good to have more authority over
ELCO, NFR Water District, Boxelder Sanitation District, FCLWD, South FTC Sanitation	<ul style="list-style-type: none"> • Often projects require state and federal permits so 1041 permit is duplicative • 1041 is a pretty onerous process to go through and add a lot of cost to projects from project delays and permitting requirements • Often criteria is so vague that it can be difficult to understand requirements, can be interpreted differently by decision-makers to fit political agendas, and prolong process because have no idea how to fulfill requirements • Need technical requirements to measure criteria against for decision making • Important to include an appeals process so that don't have to go through process if impacts are minimal

	<ul style="list-style-type: none">• Concern regulations will prohibit regional projects from being approved that provide regional needs• Engagement will require significant lead time so boards have the chance to review draft regulations and staff perform several job functions; (2-3 months for review and comment preferable)• Would like projects currently planned be approved through SPAR process and not have to wait until 1041 regs are developed
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July 27, 2021



1041 Regulations
Paul Sizemore & Kelly Smith

1. Do Councilmembers support one of the following options to develop 1041 Regulations?
 - Option #1: Regulations focused on immediate development pressures
 - Option #2: Regulations based on immediate and potential development pressures

2. Do Councilmembers support a mid-cycle appropriation to expedite project initiation?



STRATEGIC ALIGNMENT

Neighborhood Livability

- 1.7 Guide
Development



BUDGET

- Not Budgeted

How City Regulates Now

S ITE

- Follows State Statutes
- Public Entities
- Role Advisory

P LAN

- Timeline: 60 Days
- Decision Can Be Overruled

A DVISORY

R EVIEW

PERMITTING PROCESS

- Role is regulatory not advisory
- Influence project location and design
- Authority to deny or revoke permit
- Enforcement and Penalties
- Financial securities for impacts and restoration requirements
- Inspections, even on private property
- Equity/benefit analysis requirements (environmental and socioeconomic)

CITY PROJECTS

- Processed like private development projects
- Requires review by PZ in all instances

EXEMPTIONS

- CDOT projects if work is within ROW
- City or Public Utility projects if work is within public easement or ROW
- City or Public Utility projects if work is to restore site ecology

Current Development Pressure

New/Expanded
Domestic Water

Municipal/
Industrial Water
Projects

Highways and
Interchanges

New
Communities

Public Utilities

Solid Waste
Disposal

Mass Transit

Airports

Geothermal
Resources

Nuclear
Detonation

Potential Future Development Pressure

New/Expanded
Domestic Water

Municipal/
Industrial Water
Projects

Highways and
Interchanges

Public Utilities

Mass Transit

- Front Range
Passenger Rail*

*potential future projects

New/Expanded Domestic Water

- **NISP**
- **NEWT 3 Water Pipeline***
- FCLWD Golden Currant
- CSU Raw Water Expansion

Highways and Interchanges

- **CDOT Port of Entry**
- **Mulberry/1-25***

Qualified projects

*Potential future projects

Mineral Resource Areas

- Gravel Mining

Natural Hazard Areas

- Geologic
- Wildfire

Historical/Natural/ Archaeological Resource Areas

- Irrigated areas

Areas Around Key Facilities

- Highways
- Airports
- Utility Infrastructure

WHAT WE HEARD:

- Complex process
- Recommend contracting help
 - Engagement significant
 - Each activity requires review criteria and submittal requirements
 - Each permit requires substantial staff time to review
 - Exemptions to specific projects/developers
- Duplicative and vague
- Concern over regulating City projects

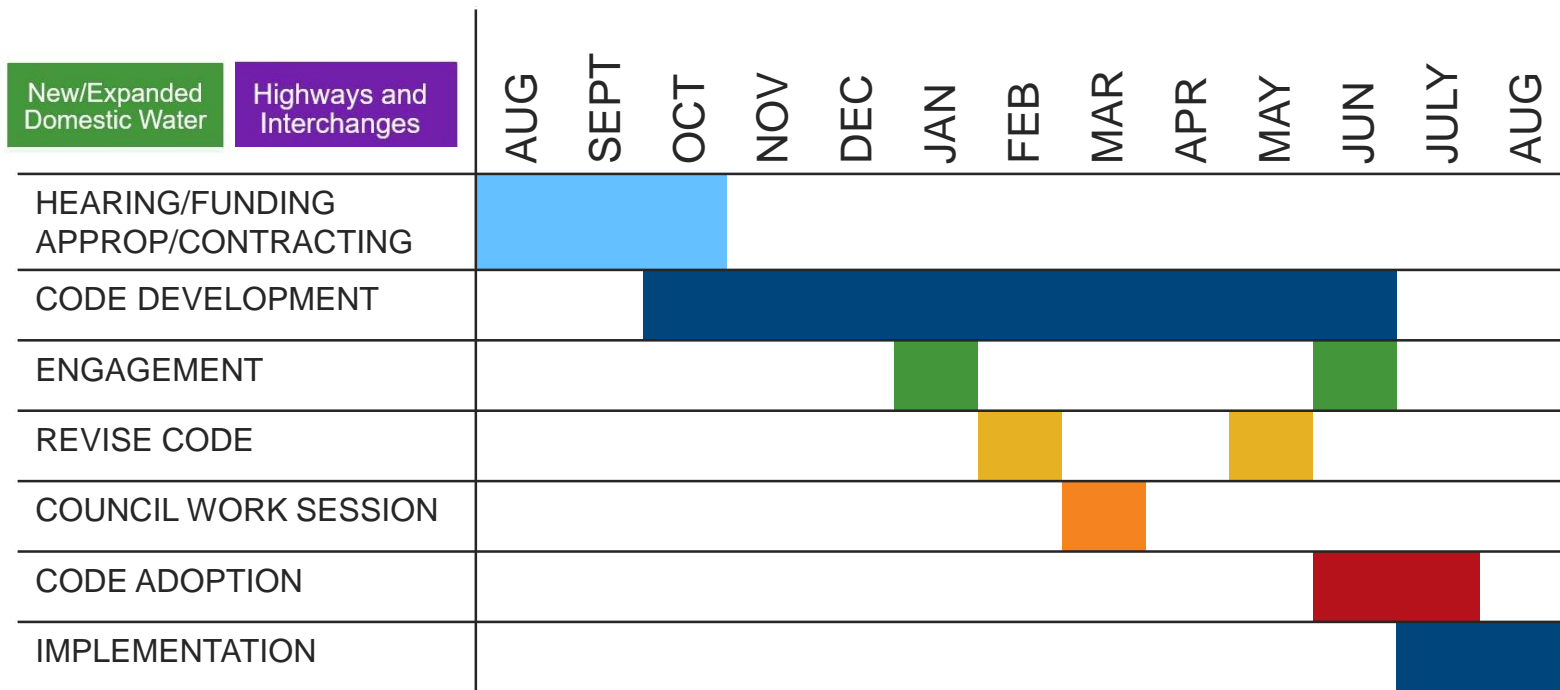


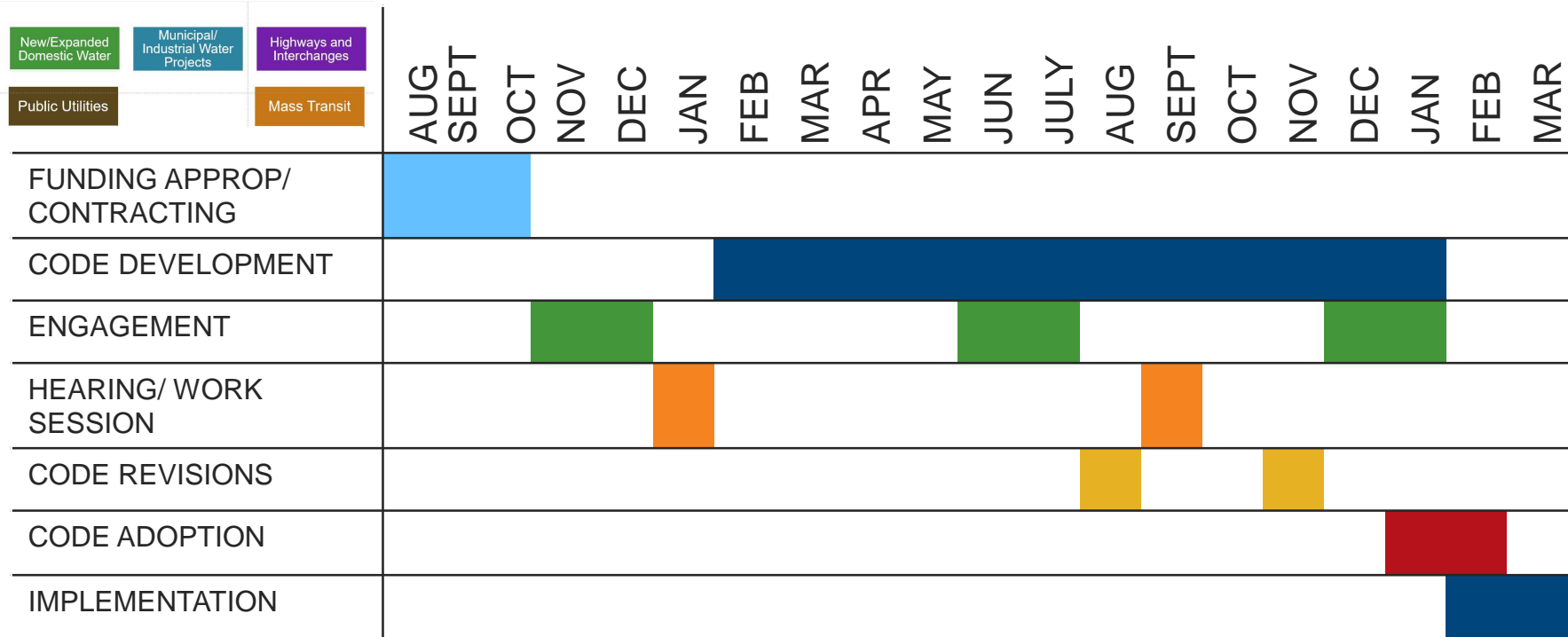
CONSULTANT SCOPE

- Assist w/ Draft Regulations
- Outside Legal Counsel
- Engagement

CITY DEPT SUPPORT:

- CAO
- Utilities
- SSD
- Transportation
- CDNS





Opportunities	Considerations
<ul style="list-style-type: none">• Regulations will likely get used• Other development types unlikely• State statutes are flexible• Shorter time frame and less resources	<ul style="list-style-type: none">• Not capitalizing on project momentum• Not immediately prepared for all development types• Regulating City projects

Opportunities	Considerations
<ul style="list-style-type: none">• Could address full authority of HB1041• Will be prepared for all potential development projects• Capitalizes on project momentum	<ul style="list-style-type: none">• Iterative process may be beneficial• Engagement would require staff time from across the organization and across different industries• May never need the full scope of regulations• Regulating City projects• More resources and time required to complete

1. Do Councilmembers support one of the following options to develop 1041 Regulations?
 - Option #1: Regulations focused on immediate development pressures
 - Option #2: Regulations based on immediate and potential development pressures

2. Do Councilmembers support a mid-cycle appropriation to expedite project initiation?