

AGENDA ITEM SUMMARY

June 4, 2019

City Council

STAFF

John Phelan, Energy Services Manager
Eric Potyondy, Legal
Cyril Vidergar, Legal

SUBJECT

Items Relating to Various Amendments to City Code Chapter 26 Pertaining to Utility Services.

EXECUTIVE SUMMARY

- A. Second Reading of Ordinance No. 069, 2019, Amending Section 26-491 of the Code of the City of Fort Collins to Add and Revise Definitions Related to the City's Stormwater System.
- B. Second Reading of Ordinance No. 070, 2019, Amending Section 26-391 of the Code of the City of Fort Collins to Add and Revise Definitions Related to the City's Municipal Electric Utility System.

These Ordinances, unanimously adopted on First Reading on May 21, 2019, update definitions in City Code Chapter 26 pertaining to Stormwater and Electric Utility Services.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on Second Reading.

ATTACHMENTS

- 1. First Reading Agenda Item Summary, May 21, 2019 (w/o attachments) (PDF)
- 2. Ordinance No. 069, 2019 (PDF)
- 3. Ordinance No. 070, 2019 (PDF)

AGENDA ITEM SUMMARY May 21, 2019
City Council

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SUBJECT

Items Relating to Various Amendments to City Code Chapter 26 Pertaining to Utility Services.

EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 069, 2019, Amending Section 26-491 of the Code of the City of Fort Collins to Add and Revise Definitions Related to the City's Stormwater System.
- B. First Reading of Ordinance No. 070, 2019, Amending Section 26-391 of the Code of the City of Fort Collins to Add and Revise Definitions Related to the City's Municipal Electric Utility System.

The purpose of this item is to make revisions, clarifications and additions to update definitions in City Code Chapter 26 pertaining to Stormwater and Electric Utility Services.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

Item A: Ordinance No. 069, 2019 - Stormwater Utility Service Definitions

The City operates under a Colorado Municipal Separate Storm Sewer System (MS4) permit, which requires the implementation of programs to prevent or reduce the discharge of pollutants to waters of the state. The MS4 permit is issued by the State of Colorado through the Colorado Department of Public Health and Environment (CDPHE). MS4 permittees must prohibit and enforce on illicit discharges to the storm sewer system.

The MS4 permit defines illicit discharge as any discharge to an MS4 that is not composed entirely of stormwater except those specifically authorized by a Colorado Discharge Permit System (CDPS) or National Pollutant Discharge Elimination System (NPDES) permit and those resulting from emergency firefighting activities. The MS4 permit also lists types of illicit discharges that can be excluded from the permittee's response and enforcement program.

Municipal Code Section 26-498 prohibits the discharge of pollutants and contaminated water to the City's storm sewer system and local surface waters. The recommended changes to the definitions below provide consistency with the MS4 permit definition of "illicit discharge."

Summary of proposed changes:

Proposed Change to City Code Section 26-491	Rationale
"Pollutants" is proposed to be added to the	"Pollutants" is proposed to be added to the

<p><u>definition of “contaminated water,” as follows:</u></p> <p>“<i>Contaminated water</i> shall mean that water which contains pollutants or constituents at concentrations which could cause, directly or indirectly, impairment of human health or the environment and which would not present in such concentrations in a natural state.”</p>	<p>definition of “contaminated water” to provide consistency between the two definitions and to clarify that pollutants in water contaminates it when they are at concentrations that are adverse to human health or the environment and are not naturally present.</p>
<p><u>The definition of “contaminated water” includes a list of water sources that are excluded from being considered “contaminated water.” Two changes are proposed to be made to that list, as follows:</u></p> <p>“This definition does not include the following sources of water, unless water from such a source is determined to violate other applicable water quality restrictions or requirements:</p> <p>“(2) landscape irrigation and residential lawn watering;</p> <p>[...]</p> <p>“(9) dye testing in accordance with manufacturers recommendations.”</p>	<p>“Residential” is removed from the list to clarify that discharges resulting from residential, commercial, and industrial lawn watering will also not be considered to be “contaminated water,” and prohibited or enforced under the City’s MS4 permit programs. Further, discharges from lawn watering activities are already covered under City Code Section 26-166, which prohibits the waste of water.</p> <p>Dye testing is added to the list because it is a necessary process and to be consistent with CDPHE’s regulations. Dye testing is a process used by water utilities to help detect cross-connections between sanitary sewers and storm sewers. Dye testing may result in a discharge of the nontoxic fluorescent dye to a local water body. CDPHE has recognized the need for dye testing to remove sanitary sewer cross-connections and has added it to the list of illicit discharges that can be excluded from an MS4 permittee’s response and enforcement program.</p>
<p><u>The words “contaminated water” are proposed to be added to the definition of “pollutants,” as follows:</u></p> <p>“<i>Pollutant</i> shall mean contaminated water, dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, disease causing agents, radioactive material, heat, wrecked or discarded equipment, rock, sand, automotive fluids, paint, cooking grease, process waste water, swimming pool discharges, discharges from cleaning of heat transfer equipment, or any industrial, commercial, construction, household, municipal, or agricultural waste.”</p>	<p>“Contaminated water” was added to the definition of “pollutant” to provide consistency between the two definitions.</p>

Item B: Ordinance No. 070, 2019 - Electric Utility Service Definitions

Average annual electricity consumption: Adding this definition clarifies the meaning of the phrase as it relates to calculations such as those related to the sizing of behind-the-meter solar electric systems (i.e., “net metered” systems). This definition is related to the size estimation of a customer’s annual usage during the application step for a net-metered solar project. The size of such customer system is affected by the 120% rule which is found at Colorado Revised Statutes § 40-2-124. The principle behind the rule is to allow the customer’s financial compensation through credits for the energy generated on site to be sufficient to offset the typical annual electricity cost for the specific customer, while limiting the amount of that energy generation so other customers can also self-generate, without requiring electric utility system reconfiguration. This statutory definition and standard are included in Chapter 26 of the Fort Collins Code.

As Fort Collins Utilities evaluates future rate structure changes for solar energy export, the need for the 120% sizing rule will also be evaluated; however, adding the “average annual electric consumption” now provides clarity for ongoing solar program implementation in the meantime.

Note also that Utilities’ solar program administration has used 24 months of usage data *when available*. When this amount of data is not available, alternative estimation methods can be used.

- **Definition:** *Average annual electricity consumption* shall mean the average monthly consumption of the previous 24 months of electricity use times twelve.

Qualifying renewable technology: Staff recommends revising the definition of *Qualifying renewable technology* to include technologies that store energy. This revision will allow other provisions of the City Code, such as net metering, to apply to storage technologies. Utilities anticipates that storage technologies will become increasingly prevalent for net metered applications in the coming years. Current City Code definitions do not mention storage. Adding the following definition will provide clarity regarding the application of City Code to storage technologies.

- **Definition:** **Qualifying renewable technology** shall mean a qualifying facility that generates electricity using renewable resources such as solar, fuel cell, wind, geothermal, combined heat and power or biomass technology, *or that stores energy*. (additions in *italics*)

CITY FINANCIAL IMPACTS

Allowing discharges from dye testing activities will eliminate the need to collect and treat the water contaminated with dye as a waste product, saving the City money in staffing, equipment, and disposal costs. There are no other expected financial impacts to the City as a result of the recommended code changes.

The proposed electrical Code changes will have no direct financial impact to the City.

BOARD / COMMISSION RECOMMENDATION

At its April 18, 2019 meeting, the Fort Collins Water Board voted unanimously in support of the proposed stormwater definition revisions.

At its April 11, 2019 meeting, the Energy Board voted 9-0 on April 11, 2019, to recommend approval of the proposed Electric Service definition revisions.

PUBLIC OUTREACH

The recommended City Code changes will not affect the way the MS4 permit illicit discharge response and enforcement activities are administered. The changes are not expected to affect the public; therefore, no public outreach activities have been conducted.

Fort Collins Utilities has presented the Electric Service changes to the Energy Board as set forth above. Staff has not done further public outreach as it was determined that the revisions were of a technical nature and that ongoing program related outreach would be sufficient.

ATTACHMENTS

1. Water Board minutes, April 18, 2019 (draft) (PDF)
2. Energy Board minutes, April 11, 2019 (PDF)

COPY

ORDINANCE NO. 069, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 26-491 OF THE CODE OF THE CITY OF
FORT COLLINS TO ADD AND REVISE DEFINITIONS RELATED
TO THE CITY'S STORMWATER SYSTEM

WHEREAS, the City owns and operates a municipal separate storm sewer system ("MS4") that is used, among other purposes, to convey stormwater to the Cache la Poudre River and its tributaries; and

WHEREAS, said conveyance of stormwater by the City's MS4 may constitute a discharge of pollutants to state waters and the waters of the United States under two statutes: the Colorado Water Quality Control Act, C.R.S. §§25-8-101 *et seq.* and the federal Clean Water Act, 33 U.S.C. §1251 *et seq.*; and

WHEREAS, under said statutes, the Colorado Department of Public Health and Environment has issued *CDPS General Permit COR090000 Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (MS4s) Authorization to Discharge Under the Colorado Permit System* ("MS4 Permit"); and

WHEREAS, there are certain inconsistencies between the MS4 Permit and Article VII of Chapter 26 of the City Code, which concerns the City's Stormwater Utility and MS4, namely with respect to certain definitions in City Code Section 26-491; and

WHEREAS, while the MS4 Permit generally requires the City to effectively prohibit illicit discharges of pollutants into the City's MS4 (as those terms are used and defined in the MS4 Permit), under Part I(E)(2)(a)(v) of the MS4 Permit, the MS4 Permit does not require the City to effectively prohibit discharges from certain activities, including: non-residential lawn watering and dye testing in accordance with manufacturers recommendations (together, "Subject Activities"); and

WHEREAS, under the current definition of "contaminated water" and "pollutant" in City Code Section 26-491, City Code Section 26-498 prohibits discharges of water to the City's MS4 from the Subject Activities; and

WHEREAS, changing the definition of "contaminated water" and "pollutant" in City Code Section 26-491 to state that these terms do not include water generated from the Subject Activities will be beneficial to the City by, among other things, better aligning City Code with the MS4 Permit, providing greater clarity regarding the City's regulation of the Subject Activities, and prioritizing MS4 and stormwater-related education and enforcement activities on more significant sources of pollutants.

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

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

Section 2. That Section 26-491 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-491. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

...

Contaminated water shall mean that water which contains pollutants or constituents at concentrations which could cause, directly or indirectly, impairment of human health or the environment and which would not present in such concentrations in a natural state. This includes any water contaminated from industrial processes, land use activities, development or other man-induced practices. These constituents include, but are not limited to, toxic pollutants as defined in § 26-206 of this Code, nutrients such as nitrogen and phosphorous, substances which promote an excessive biochemical oxygen demand (BOD) or chemical oxygen demand (COD) as those terms are defined in § 26-206, substances which cause the pH of such water to deviate from acceptable standards, biological agents which may be the cause of disease in either humans or other desirable organisms, and physical contaminants such as excess sediments and/or temperature. U.S. Environmental Protection Agency's current publication of "Quality Criteria for Water," and/or the State of Colorado's "Basic Standards and Methodologies for Surface Water" and/or any other federal or state regulation or guideline may be used to interpret the impact of a particular constituent upon a water body. This definition does not include the following sources of water, unless water from such a source is determined to violate other applicable water quality restrictions or requirements:

- (1) Flows incidental to emergency fire fighting activities;
- (2) Landscape irrigation and lawn watering;
- (3) Irrigation return flows;
- (4) Springs, diverted stream flows and flows from riparian habitats and wetlands;
- (5) Flows incidental to street, sidewalk or median sweeping and not associated with construction;
- (6) Flows from condensation formed from the operation of air conditioning equipment installed and maintained in accordance with manufacturer's specifications;
- (7) Uncontaminated pumped, infiltrated or rising ground water;

(8) Flows from properly installed, operated and maintained and City-approved footing, foundation or crawl space drain or pump-; and

(9) Dye testing in accordance with manufacturers recommendations.

...

Pollutant shall mean contaminated water, dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, disease causing agents, radioactive material, heat, wrecked or discarded equipment, rock, sand, automotive fluids, paint, cooking grease, process waste water, swimming pool discharges, discharges from cleaning of heat transfer equipment, or any industrial, commercial, construction, household, municipal, or agricultural waste.

...

Introduced, considered favorably on first reading, and ordered published this 21st day of May, A.D. 2019, and to be presented for final passage on the 4th day of June, A.D. 2019.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading on the 4th day of June, A.D. 2019.

Mayor Pro Tem

ATTEST:

City Clerk

ORDINANCE NO. 070, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 26-391 OF THE CODE OF THE CITY OF FORT COLLINS
TO ADD AND REVISE DEFINITIONS RELATED TO THE CITY'S
MUNICIPAL ELECTRIC UTILITY SYSTEM

WHEREAS, the City owns and operates a municipal electric distribution system to deliver electric power purchased by the City to retail customers and to accommodate interconnection of customer-owned renewable power generation devices; and

WHEREAS, Chapter 26 of the City Code regulates and governs the provision of utility services and sets forth definitions of terms used to describe and applicable to conditions for receipt of utility services; and

WHEREAS, such provisions require updating and modification from time to time, for purposes of clarification and to ensure the Code remains a dynamic document capable of responding to issues identified by staff, customers, and citizens and changes in the law regarding the delivery of public utility services; and

WHEREAS, staff has proposed that identified definitions be added and amended in Chapter 26 of the City Code to clarify how net-metered customer generation technologies are managed, and to better inform customers and align with current utility practices; and

WHEREAS, in light of the foregoing, the City Council has determined the amendment and supplementation of definitions in Chapter 26 of the City Code is necessary and will be beneficial for the ratepayers of the City's Electric Utility and for the efficient administration of Utility functions.

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

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

Section 2. That Section 26-391 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-391. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

...

Average annual electricity consumption shall mean the average monthly consumption of the previous twenty-four (24) months of electricity use times twelve (12x).

...

Qualifying renewable technology shall mean a qualifying facility that generates electricity using renewable resources such as solar, fuel cell, wind, geothermal, combined heat and power or biomass technology, or that stores energy.

...

Introduced, considered favorably on first reading, and ordered published this 21st day of May, A.D. 2019, and to be presented for final passage on the 4th day of June, A.D. 2019.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading on the 4th day of June, A.D. 2019.

Mayor Pro Tem

ATTEST:

City Clerk