



NO. 2022-24

A RESOLUTION APPROVING A MORATORIUM ON DEVELOPMENT PURSUANT TO ORS 197.505 TO 197.540 BASED ON LIMITED SANITARY SEWER CAPACITY

Whereas, pursuant to the federal Clean Water Act of 1972, the City of Sandy sanitary sewer collection and treatment system is subject to a National Pollutant Discharge Elimination System (NPDES) permit (the Permit) issued to the City by Oregon Department of Environmental Quality (DEQ) under authority granted by the U.S. Environmental Protection Agency (EPA);

Whereas, the Permit limits the types and amounts of discharges from the City treatment plant into Tickle Creek;

Whereas, population growth and development in the City has increased the demand on the available capacity at the treatment plant;

Whereas, inflow and infiltration (I&I) into the City collection system (i.e. sewer pipes) from surface water has also increased the demand on available treatment plant capacity;

Whereas, the combination of I&I and increased base flows has caused discharges from the treatment plant to violate permitted NPDES levels during certain weather events;

Whereas, the permit violations have resulted in enforcement proceedings from DEQ and a referral to EPA from DEQ. Compliance will require that the City limit additional connections to the City sanitary sewer system until certain improvements have been made increasing existing capacity at the treatment plant;

Whereas, the City is engaged in a significant program of investigation, remediation and repair of the collection system to reduce the amount of I&I and the corresponding demand on the treatment facilities;

Whereas, the City is also updating the Facilities Master Plan to provide for the design, financing and construction of additional treatment facilities;

Whereas, to reduce the potential for additional violations, the City will limit new connections to the sanitary sewer system until the I&I program and/or improvements to the treatment facility increase available capacity to accommodate additional development;

Whereas, the moratorium imposed by this Resolution is intended to prevent the approval of additional development that will require a connection or connections to the City sanitary sewer system;

Whereas, as additional capacity becomes available the City Council anticipates that additional development projects will be allowed to connect to the sanitary sewer system; however, because additional capacity may not become available within the next six months, the City Council anticipates it may need to extend the moratorium;

Whereas, the moratorium is necessary to prevent the approval and vesting of additional development projects until adequate capacity becomes available in the City's sanitary sewer system; and

Whereas, this Resolution is authorized by ORS 197.505 to 197.540.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy

Section 1. The City of Sandy Development Services Department (Department) staff shall not accept or process a land use application or other application for approval of new development that is submitted on or after the effective date of this Resolution if the development will require a new connection to the City sanitary sewer system.

Section 2. Section 1 of this Resolution applies to the following types of land use applications or other similar application as determined by the Department Director:

- a. Annexation.
- b. Comprehensive plan or zoning map amendment.
- c. Subdivision.
- d. Partition, except as provided in Section 3.1 below.
- e. Specific area plan.
- f. Replat that results in a new lot.
- g. Design review that will require a new connection if approved, including conversion of a single-family dwelling into a duplex.
- h. Accessory dwelling unit.
- i. Food cart permit outside of an existing pod.
- j. Conditional use permit that requires a new connection.
- k. Hardship permit that requires a new connection.

Section 3. Section 1 of this Resolution does not apply to the following types of land use applications or other similar application as determined by the Department Director:

- a. Property line adjustment.
- b. Conditional use permit without a new connection.
- c. Food cart permit inside an existing pod.
- d. Adjustment, variance or design deviation.

- e. Tree permit.
- f. Flood slope hazard permit.
- g. Hillside development permit.
- h. Replat that does not create a new lot.
- i. Street vacation.
- j. Request for code interpretation.
- k. Development that relies on on-site septic treatment or other alternative to connection to the City sanitary sewer.
- l. Middle Housing Land Division per Section 17.100.50 of the SMC and SB 458 (2021) of a lot or parcel with an existing duplex

Section 4. During the time this Resolution is in effect, the Department will limit any new connections to the City's sanitary sewer system to 120 equivalent residential units (ERUs). The Department shall not issue building permits or other permits that in total would allow more than 120 new connections to the City sanitary sewer system. For purposes of this limitation, a connection is deemed to be the equivalent of a single-family dwelling. A second connection to an existing duplex currently served by a single connection in order to allow a Middle Housing Land Division under Section 3.l above shall not be considered a new connection for purposes of this Section 4.

Section 5. The City Council shall review this Resolution and determine whether there is a need to renew, revise or repeal it not more than six months after the effective date.

Section 6. This Resolution is based on the recitals above and the findings of fact set forth in the attached Exhibit A.

Section 7. This Resolution is effective on the date it is adopted by the City Council and shall remain in effect for a period of six months, unless earlier renewed or repealed.

This resolution is adopted by the Common Council of the City of Sandy and approved by the Mayor this 03 day of October 2022



Stan Pulliam, Mayor

ATTEST:

A handwritten signature in black ink, reading "Jeff Aprati". The signature is written in a cursive, flowing style with a long horizontal stroke extending from the end of the name.

Jeff Aprati, City Recorder

EXHIBIT A

FINDINGS OF FACT

1. These findings are intended to supplement the findings stated the recitals to Resolution 22-24.
2. ORS 197.520 provides:
 - a. The City must provide the Department of Land Conservation and Development (DLCD) notice of the moratorium 45 days in advance of the final public hearing.

Finding: The City mailed and emailed notice to DLCD on August 16, 2022.

- b. The city may not adopt a moratorium unless it makes written findings that justify the need for the moratorium. ORS 197.520(1)(b).

Finding: The existing capacity of the City sanitary sewer system is not sufficient to accommodate the demand on the system without violating the City's NPDES permit. As a result, the city is subject to an enforcement proceeding that requires the city to limit new connections to the system. These Findings of Fact and the recitals in the Resolution are "written findings" that satisfy the requirement for findings in ORS 197.520(1)(b).

- c. The City must hold a public hearing on the proposed moratorium.

Finding: The City Council held a public hearing on October 3, 2022, on the proposed Resolution and Findings of Fact.

- d. For urban and urbanizable land, the city must show that the moratorium is justified by the need to prevent the shortage of public facilities that would otherwise occur during the effective period of the moratorium. ORS 197.520(2).

Finding: The City's sanitary sewer system is already past existing capacity, as evidenced by the NPDES permit violations and corresponding state and federal enforcement proceeding. Accordingly, the moratorium is justified by an existing shortage of an essential public facility. For this reason, the criterion is met.

- e. The extent of need beyond the estimated capacity of the existing public facilities that is expected to result from additional land development. ORS 197.520(2)(a).

Finding: As noted, the City's sanitary sewer treatment facilities are already past existing capacity. As such, any demand from new development will exceed the current collection and treatment capacity. However, because of the City's existing I&I program, the City anticipates a limited amount of capacity will become available during the period this Resolution is in effect and have negotiated a limited number of connections for existing

development projects that have already been approved by the City. To the extent the I&I program and related improvements to the treatment facilities result in an increase of collection and treatment capacity, the City anticipates more connections may be allowed.

- f. The moratorium is limited to those areas of the City affected by the shortage of public facilities. ORS 197.520(2)(b).

Finding: The City sanitary sewer system serves the entire City. Therefore, the moratorium applies to all development applications in the City.

- g. The housing and economic development needs of the area affected have been accommodated as much as possible in any program for allocating any remaining public facility capacity. ORS 197.520(2)(c).

Finding: The City has negotiated with the DEQ and the EPA a limited number of connections to accommodate as much as possible development that has already been approved. Moreover, as additional capacity comes available as result of improvements and repairs to the collection and treatment systems, this capacity will be made available for future housing and economic development. Accordingly, this criterion is met.

- 3. This Resolution is based on and directly implements state law. There are no applicable goals and policies in the Sandy Comprehensive Plan.