



NO. 2023-07

A RESOLUTION EXTENDING 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); and

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

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

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; and

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; and

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; and

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; and

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

Whereas, to reduce the potential for additional violations, the City enacted a development moratorium on October 3, 2022 to 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; and

Whereas, that moratorium was intended to prevent the approval of additional development that will require a connection or connections to the City sanitary sewer system; and

Whereas, that moratorium was 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, that moratorium is scheduled to expire on April 3, 2023; and

Whereas, the City has made significant progress in its efforts to alleviate the problems giving rise to the October 3, 2022 moratorium; nevertheless, because of the extent of the improvements needed to fully alleviate the problems giving rise to the need for the October 3, 2022 moratorium, and because the results of those efforts will not be known or quantified until the completion of the "stress test" process, which began on March 14, 2023 and is anticipated to take several months, those problems still exist; and

Whereas, the City Council therefore has determined it necessary to extend the expiration date of the October 3, 2022 moratorium and Resolution 2022-24 by six additional months, to October 3, 2023; and

Whereas, as additional capacity becomes available and quantified, which is anticipated to occur in the next several months with the completion of the stress testing and comprehensive capacity evaluation, the City Council anticipates that additional development projects will be allowed to connect to the sanitary sewer system beyond the 120 ERUs currently allowed; however, because sufficient capacity to eliminate the moratorium entirely may not become available within the next six months, the City Council anticipates it may need to further extend the moratorium or enact a replacement moratorium with different terms when additional information and/or capacity become available; 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 expiration date of the October 3, 2022 moratorium and Resolution 2022-24 are hereby extended to October 3, 2023.

Section 2. All terms of the October 3, 2022 moratorium and Resolution 2022-24, other than the expiration date, shall remain in full force and effect.

Section 5. The City Council shall review the moratorium and determine whether there is a need to extend, revise or repeal it no later than October 3, 2023.

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.

This resolution is adopted by the Common Council of the City of Sandy and approved by the Mayor this 20 day of March 2023



Stan Pulliam, Mayor

ATTEST:



Jeff Aprati, City Recorder

EXHIBIT A

FINDINGS OF FACT

1. These findings are intended to supplement the findings stated in the recitals to Resolution 2023-07. They are also intended to supplement the findings and recitals in and attached to Resolution 2022-24, which are incorporated herein by reference.
2. ORS 197.530 provides:
 - a. A moratorium adopted under ORS 197.520(2) may be extended provided the city adopting the moratorium holds a public hearing on the proposed extension and adopts written findings.

Finding: The City Council held a public hearing on March 20, 2023 on the proposed Resolution extending the moratorium and these Findings of Fact. These Findings of Fact and the recitals in Resolution 2023-07 are “written findings” that satisfy the requirement for findings.

- b. The findings must verify that the problem giving rise to the moratorium still exists.

Finding: The City remains under state and federal enforcement proceedings relating to lack of capacity in its wastewater systems. Although the City has made significant progress toward resolving those capacity issues, the results of those efforts will not be known or quantified until the completion of the “stress test” procedure that began on March 7, 2023 and is anticipated to take several months. A negotiated estimate of the additional capacity resulting from those efforts was already incorporated into the October 3, 2022 moratorium in the form of the allowance for new connections totaling 120 ERUs. For these reasons, this criterion is met.

- c. The findings must demonstrate that reasonable progress is being made to alleviate the problem giving rise to the moratorium.

Finding: Since October 3, 2022, the City has renewed and increased staffing required to execute the improvement program, stress testing, and construction contracts. On October 17, 2022, the City formalized a loan amendment to fund improvements and approved Owners Representative Services Contract Amendment #3 for Sandy Clean Waters Phase 1A. On November 7, 2022, the City awarded a contract for a Wastewater System Facilities Plan Amendment to determine the next phase of improvements for alternative discharge and wastewater treatment plant expansion. On February 6, 2023, the City awarded a manhole grouting construction contract to further reduce infiltration and inflow into the collection system, as well as a contract award for Program Management Services for the next phase of Wastewater System Expansion, which will address contracting, permitting, and funding.

In addition, the City has submitted plans for conducting stress testing to EPA for approval, started a sampling program, and is in startup and commissioning for the WWTP

Immediate Needs Improvement Project. The City is also working toward substantial completion for Collection Systems Basin 6 and 7 Upgrades.

Finally, on March 14, 2023, the City began the stress test process, which will evaluate and quantify the capacity in the wastewater treatment system resulting from the improvement efforts made to date. This process is anticipated to last several months.

Additional steps the City has planned to address these issues include:

- Completing construction of the Immediate Needs WWTP Improvements Project and Basin 6 and 7 upgrades.
- Completing the Facilities Plan Amendment.
- Closing on CWSRF and WIFIA loans.
- Completing design for recommended improvements that emerge from the Facilities Plan.

Although work remains to be done, the City has made great progress in the past six months. This criterion is met.

- d. The findings must set a specific duration for the renewal of the moratorium. No single extension may be for a period longer than six months, and no moratorium shall be extended more than three times.

Finding: The duration of the renewal is six months, ending October 3, 2023. This is the first extension of the October 3, 2022 moratorium.

- e. Any city considering an extension of a moratorium shall give the Department of Land Conservation and Development (DLCD) at least 14 days' notice of the time and date of the public hearing on the extension.

Finding: The City e-mailed notice to DLCD on March 6, 2023.

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