



NO. 2023-27

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

**THE CITY OF SANDY, CLACKAMAS COUNTY, OREGON, FINDS AS FOLLOWS:**

**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 City has 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 amending the Facilities Master Plan to provide for the design, financing, and construction of additional treatment facilities to improve the capacity of the City's wastewater system in the long term; and

**WHEREAS**, the aforementioned permit violations have resulted in enforcement proceedings from DEQ and EPA which are anticipated to be resolved via the consent decree approved by the City Council on June 5, 2023 (the "Consent Decree"); and

**WHEREAS**, the terms of the Consent Decree require the City to perform a "stress test" and comprehensive capacity analysis that will determine the capacity of the City's existing sanitary sewer system based on work the City has already performed to improve capacity; and

**WHEREAS**, the results of the comprehensive capacity analysis are not anticipated to be available and approved by EPA and DEQ until Fall 2023; and

**WHEREAS**, the Consent Decree requires the City to limit new connections to the City's sanitary sewer system, and modifications to existing connections to the City's sanitary sewer system that increase flows, to no more than 300 equivalent residential units (ERUs) until the comprehensive capacity analysis results are approved by EPA and DEQ, at which point the 300 ERU cap will be replaced with a cap determined by the results of the comprehensive capacity analysis; and

**WHEREAS**, upon completion of the comprehensive capacity analysis and approval of the results by EPA and DEQ, the City anticipates that additional capacity will become available and additional development projects will be allowed to connect to the sanitary sewer system and add increased flows through existing connections; and

**WHEREAS**, the Consent Decree requires the City to take such actions as are necessary to meet the above obligations, including enactment of a development moratorium; and

**WHEREAS**, the Consent Decree also sets out a process the City is required to follow in order to address the lack of capacity in its wastewater system moving forward, including specific steps the City is required to take and deadlines for completion; and

**WHEREAS**, the moratorium imposed by this Resolution is intended to meet the City's obligations under the Consent Decree and to prevent the approval of additional development that will require new connections to the City's sanitary sewer system or modifications to existing connections to the City's sanitary sewer system that increase flows, until such time as sufficient additional capacity in the City's wastewater system is achieved; and

**WHEREAS**, while negotiations with EPA and DEQ were ongoing, the City enacted a development moratorium via Resolution 2022-24 on October 3, 2022, and extended that moratorium via Resolution 2023-07 on March 20, 2023; and

**WHEREAS**, the new moratorium enacted by this Resolution is intended to replace said prior moratorium; 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 moratorium previously enacted via Resolution 2022-24 on October 3, 2022, and extended via Resolution 2023-07 on March 20, 2023, is hereby repealed.

**Section 2.** The City of Sandy Development Services Department (Department) staff shall not accept or process a land use application or other application for approval of 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 or will result in increased flow through an existing connection to the City's sanitary sewer system.

**Section 3.** Section 2 of this Resolution applies to the following types of land use applications or other similar application as determined by the Department Director:

- a.) Comprehensive plan or zoning map amendment.
- b.) Subdivision.
- c.) Partition, except as provided in Section 4.I below.
- d.) Specific area plan.
- e.) Replat that results in a new lot.
- f.) Design review that will require a new connection or increased flows through an existing connection if approved, including conversion of a single-family dwelling into a duplex.
- g.) Accessory dwelling unit.
- h.) Food cart permit outside of an existing pod.
- i.) Conditional use permit that requires a new connection or will result in increased flows through an existing connection.

**Section 4.** Section 2 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 and which will not result in increased flows through an existing 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 another alternative that does not connect to the City sanitary sewer, as allowed under City code and other applicable law.
- l.) Middle Housing Land Division per Section 17.100.50 of the Sandy Municipal Code and SB 458 (2021).
- m.) City projects described in a facility plan or master plan.
- n.) Annexations.
- o.) Hardship permits.

**Section 5.** During the time this Resolution is in effect, the Department will limit any new connections to the City’s sanitary sewer system, and any increased flows through existing connections, to 300 ERUs. The Department shall not issue building permits or other permits that in total would allow more than 300 ERUs through new connections or increased flows through existing connections to the City sanitary sewer system. This Section 5 is subject to the following:

- a.)** ERUs shall be calculated as set forth in the Consent Decree.
- b.)** Twelve (12) of the 300 ERUs shall be exclusively for use for economic development projects, which shall be defined as any private development or portion thereof that is not residential.
- c.)** Two (2) of the 300 ERUs shall be exclusively for use for City projects under Section 4.m above.
- d.)** A second connection to an existing duplex currently served by a single connection in order to allow a Middle Housing Land Division under Section 4.l above, per Section 17.100.50 of the Sandy Municipal Code and SB 458 (2021), shall not be considered a new connection for purposes of this Section 5.

**Section 6.** The City Council shall review this Resolution and determine whether there is a need to extend or repeal the moratorium it establishes based on the results of the comprehensive capacity analysis after such results are approved by EPA and DEQ, or in any event not more than six months after the effective date of this Resolution.

**Section 7.** The City hereby adopts the requirements of the Consent Decree as its program to correct the problems leading to this moratorium, as required by ORS 197.530.

**Section 8.** This Resolution is based on the recitals above and the findings of fact set forth in the attached Exhibit A.

**Section 9.** 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 extended or repealed.

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



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Stan Pulliam, Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "Jeff Aprati". The signature is written in a cursive, flowing style.

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Jeff Aprati, City Recorder

# EXHIBIT A

## FINDINGS OF FACT

1. These findings are intended to supplement the findings stated in the recitals to Resolution 2023-27.

2. ORS 197.520 provides:

(1) No city, county or special district may adopt a moratorium on construction or land development unless it first:

(a) Provides written notice to the Department of Land Conservation and Development at least 45 days prior to the final public hearing to be held to consider the adoption of the moratorium;

**Finding: The City e-mailed notice to DLCD on May 5, 2023. This criterion is satisfied.**

(b) Makes written findings justifying the need for the moratorium in the manner provided for in this section; and

**Finding: The findings stated in the recitals to Resolution 2023-27 and this Exhibit A are written findings justifying the need for the moratorium. This criterion is satisfied.**

(c) Holds a public hearing on the adoption of the moratorium and the findings which support the moratorium.

**Finding: The City Council held a hearing on the adoption of the moratorium and the findings during a duly noticed public meeting on June 20, 2023. This criterion is satisfied.**

(2) For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of public facilities which would otherwise occur during the effective period of the moratorium. Such a demonstration shall be based upon reasonably available information, and shall include, but need not be limited to, findings:

**Finding: The land affected by this moratorium is the entire city limits of the City of Sandy, which is urban or urbanizable land. The basis for the moratorium is a need to prevent a shortages of public facilities which would otherwise occur during the effective period of the moratorium. This criterion is satisfied.**

(a) Showing the extent of need beyond the estimated capacity of existing public facilities expected to result from new land development, including identification of any public facilities currently operating beyond capacity, and the portion of such capacity already committed to development;

**Finding: The Consent Decree constitutes a legally binding agreement and court order establishing that the capacity of the City's wastewater system is an additional 300 ERUs as of the effective date of the Consent Decree. City staff has estimated that applications for land use approval submitted prior to the effective date (October 3, 2022) of the prior moratorium created by Resolution 2022-24, and not yet developed, will require 592.9 ERUs of wastewater system capacity. Therefore, even before taking into consideration any need which may exist beyond the development represented by applications for land use approval that were submitted prior to October 3, 2022, the wastewater system capacity already committed to development, for purposes of ORS 197.520(2)(a), exceeds the capacity of existing public facilities. This criterion is satisfied.**

- (b) That the moratorium is reasonably limited to those areas of the city, county or special district where a shortage of key public facilities would otherwise occur; and

**Finding: The City sanitary sewer system serves the entire City. Therefore, the moratorium must apply to the entire City. This criterion is satisfied.**

- (c) That 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.

**Finding: The City negotiated with DEQ and EPA to maximize the number of ERUs of capacity that would be available prior to the approval of the results of the comprehensive capacity analysis in order to accommodate as much development addressing housing and economic development needs as possible. The City anticipates more capacity becoming available based on the results of the comprehensive capacity analysis, and the moratorium will be revisited as needed to ensure any such capacity will be made available to address additional housing and economic development needs. Moreover, as further capacity becomes available as a result of improvements and repairs to the collection and treatment systems, the City also intends that this capacity will be made available to address additional housing and economic development needs.**

**The vast majority of the land use applications submitted prior to October 3, 2022 relate to housing. In order to ensure a degree of balancing of accommodation of housing needs with economic development needs in the area, the moratorium allocates twelve ERUs of capacity to economic development projects, based on the ERUs estimated to be required by the economic development projects that were submitted for land use approval prior to October 3, 2022. Two ERUs are allocated for public projects necessary to serve the community, as described in facility plans and master plans. The remaining 286 ERUs (95.3% of the total capacity) are available for housing projects.**

**This criterion is satisfied.**

3. ORS 197.530 provides:

- (1) A city, county or special district that adopts a moratorium on construction or land development in conformity with ORS 197.520(1) and (2) shall within 60 days after the effective date of the moratorium adopt a program to correct the problem creating the moratorium. The program shall be presented at a public hearing. The city, county or special district shall give at least 14 days' advance notice to the Department of Land Conservation and Development of the time and date of the public hearing.

**Finding: Resolution 2023-27 adopts the requirements of the Consent Decree as the City's program to correct the problem creating the moratorium. It is adopted simultaneously with adoption of the moratorium. This program was presented at a public hearing under consideration of Resolution 2023-27 on June 20, 2023. Notice of this public hearing was provided to DLCD via e-mail on May 5, 2023. This criterion is satisfied.**

- (2) No moratorium adopted under ORS 197.520(2) shall be effective for a period longer than six months from the date on which the corrective program is adopted...

**Finding: The effective period for this moratorium is six months. This criterion is satisfied.**

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