



# STAFF REPORT

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**Meeting Type:** City Council  
**Meeting Date:** June 3, 2024  
**From:** Josh Soper, City Attorney  
**Subject:** PUBLIC HEARING: Resolution 2024-11 - Revised Moratorium Raising Limit on New Wastewater Connections

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## DECISION TO BE MADE:

Whether to adopt a revised moratorium lifting the limit on equivalent residential units (ERUs) from 300 to 570 and making other changes and clarifications.

## PURPOSE / OBJECTIVE:

To establish alignment with the conditional approval from EPA and DEQ providing the City access to 570 ERUs, and to make additional changes to best address the needs of the City, developers, and property owners.

## BACKGROUND / CONTEXT:

The City first enacted a development moratorium relating to capacity issues with its wastewater treatment system on October 3, 2022 (Moratorium 1.0) prior to entering the Consent Decree with EPA and DEQ relating to those same issues. That moratorium prohibited most new land use applications and limited development to 120 ERUs, which was the Period 1 (initial) cap in the draft Consent Decree during negotiations at that time.

Subsequently, the City successfully negotiated a Period 1 cap of 300 ERUs prior to entering the Consent Decree. As a result, the City repealed and replaced Moratorium 1.0 with a new moratorium on June 20, 2023 (Moratorium 2.0) with a cap of 300 ERUs (among other changes). Notably, the count started over at 300 ERUs at that point—the ERUs used during Moratorium 1.0 did not count against the 300 ERUs in Moratorium 2.0, due to the terms of the Consent Decree.

Period 1 under the Consent Decree began when the Consent Decree was entered. Period 2 began after the City completed a comprehensive capacity evaluation process (stress test) to determine the actual capacity of the City's wastewater system, and after the resulting report was reviewed and approved by EPA/DEQ. That process ended on April 11, 2024, with EPA/DEQ providing conditional approval. The terms of the conditional approval are as follows:

570 ERUs available immediately, without conditions

Cap will increase to 760 ERUs once:

1. The City submits to EPA/DEQ a detailed technical memorandum outlining proposed modifications to operations and/or to the WWTP to address EPA/DEQ's remaining technical concerns. Memo must include records of recent operations, including all Mixed Liquor Suspended Solids and Sludge Volume Index data for the WWTP since

December 1, 2023, and updated information regarding the impact of its ongoing inflow and infiltration reduction efforts on the peak flows associated with the identified “design” storm.

2. Said memo is approved by EPA/DEQ, City completes the proposed modifications, City submits documentation of completion, and EPA/DEQ approve.

Staff is now bringing forward a resolution to establish a development moratorium that is in alignment with the terms of the conditional approval, among other changes. **Approval of this resolution will loosen the terms of the moratorium and allow additional new construction to move forward in the city.** This resolution would have the effect of adopting a new moratorium and repealing the existing moratorium, rather than being an extension of the existing moratorium, because state law requires a new moratorium be adopted in order to make any modifications to the moratorium terms.

Importantly, the ERUs the City has issued since entering the Consent Decree (Moratorium 2.0 forward) do count toward the 570 ERU cap, meaning that, as of this writing, the City has access to 451.2 ERUs. City staff estimates that it will consume up to 447.7 ERUs to accommodate all of the developments currently in the City’s development pipeline, i.e. those developments for which land use applications were submitted prior to the enactment of Moratorium 1.0. That means that, for the first time since adopting Moratorium 1.0, the City has access to enough ERUs to allow all of the developments for which land use applications were submitted prior to Moratorium 1.0 to move forward.

#### **KEY CONSIDERATIONS / ANALYSIS:**

As a result of the foregoing, as well as staff experience under the previous moratoria, City staff are proposing several key changes in Moratorium 3.0:

1. As of the time of publication of this staff report, the cap increases to 451.2 ERUs. This number is expected to change as more ERUs may be issued prior to the time of the Council meeting.
2. Creation of an ERU allocation program to allow developments in the pipeline to apply for and receive an allocation of ERUs
3. Limit use of remaining ERUs to situations such as failed septic systems, as well as construction of duplexes on developments in the pipeline (because most duplexes, except for those explicitly included in land use decisions, are not accounted for in the allocation methodology)
4. Allow ERUs to be reassigned under certain circumstances
5. Allow some additional types of land use applications (e.g. zone changes) and clarify language relating to other types of land use applications

The allocation program is intended to provide the assurances and certainty developers need in order to obtain financing and move forward with their projects. The number of ERUs a development can receive is limited to (1) the number of ERUs that can be calculated directly from the terms of the development approval, where applicable; or when that’s not the case, (2) one ERU per buildable lot created through a land use process.

Because the latter calculation does not allow for development of duplexes, the program makes the remaining ERUs available for construction of duplexes on a first-come, first-served basis. Based on what staff knows informally about developers’ plans, we anticipate that the number of ERUs that will be available for that purpose will almost precisely match the demand.

The allocation program also provides that any remaining ERUs can be used on a first-come, first-served basis for situations such as failed septic systems. Staff anticipates that there may be a need for a small number of ERUs for this purpose in the near future.

The ERU reassignment program is intended to address a few specific types of issues:

1. Where a developer has land use approval and ERUs allocated for a specific use on a particular property but desires to instead use the property for a different purpose.
2. Where a developer has land use approval and ERUs allocated for a specific use on a particular property but instead wishes to develop that same use on a different property.
3. Properties with vacant and/or derelict buildings which could be re-developed without consuming more ERUs than were allocated to the existing structure/use.
4. A potential need for the City to reallocate ERUs from property it owns, which are not currently being used, to other City property.

Finally, the draft moratorium makes clear that the City will re-evaluate the use of any ERUs not allocated (or for which the allocation has expired) when it next reviews the moratorium. As required by state law, this moratorium must be revisited by Council within six months after its adoption.

**BUDGET IMPACT:**

As compared to the moratorium currently in effect, this moratorium is expected to have a difficult to quantify, but positive, budgetary impact through reduced litigation risk, increased Development Services Department fee revenue from developments that move forward, increased property values which will result in more property tax revenue, and revenue from utility services on properties that are developed.

**RECOMMENDATION:**

Staff recommends the City Council approve Resolution 2024-11.

**SUGGESTED MOTION LANGUAGE:**

“I move to adopt Resolution 2024-11.”

**LIST OF ATTACHMENTS / EXHIBITS:**

1. Resolution 2024-11 with attached findings