



STAFF REPORT

Economic Development Advisory Board

Meeting Type: Economic Development Advisory Board (EDAB)
Meeting Date: June 3, 2024
From: Kelly O'Neill Jr., Development Services Director
Subject: Development Update Related to Moratorium

MORATORIUM HISTORY:

October 3, 2022: The City first enacted a development moratorium relating to capacity issues with its wastewater treatment system (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.

June 20, 2023: The City repealed and replaced Moratorium 1.0 with a new moratorium on June 20, 2023 (Moratorium 2.0) with a cap of 300 ERUs (among other changes).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.

April 2024 Approval from EPA/DEQ: 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 for more ERUs. The terms of the conditional approval were as follows:

- 570 ERUs are available immediately, without conditions.
- Increase by an additional 190 ERUs based on additional stipulations.

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 429.1 ERUs. City staff estimates that it will consume up to 427.5 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 October 3, 2022).

June 3, 2024: The City Council enacted a new development moratorium (Moratorium 3.0) known as Resolution No. 2024-11 with the following changes:

1. The ERU cap increased to 570 ERUs (270 more ERUs than Moratorium 2.0).
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.

ERU ALLOCATION PROGRAM:

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.

As of August 9, 2024, the City Development Services Director has issued ERU allocation letters to 22 developers/contractors. The City of Sandy has 17.5 ERUs remaining that could still be allocated through the ERU allocation process, for failed septic systems, or for duplexes.

ERU REASSIGNMENT PROGRAM:

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.