



## RESOLUTION NO. 2024-24

### **A RESOLUTION EXTENDING 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 the 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 in the process of amending the Wastewater 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 resulted in enforcement proceedings from DEQ and EPA, which were resolved via the consent decree entered in the United States District Court for the District of Oregon on September 11, 2023 ("Consent Decree"); and

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

**WHEREAS**, the Consent Decree also required 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 were approved by EPA and DEQ, at which point the 300 ERU cap would be replaced with a cap determined by the results of the comprehensive capacity analysis; and

**WHEREAS**, the City submitted the results of the comprehensive capacity analysis to EPA and DEQ on September 29, 2023, which resulted in a conditional approval decision on April 11, 2024, authorizing the City to immediately access 270 additional ERUs above and beyond the 300 ERUs previously available, and to access 190 additional ERUs upon the completion of certain specified actions by the City and approval by EPA and DEQ; and

**WHEREAS**, upon completion of the actions described in the conditional approval, and further approval by EPA and DEQ, the City anticipates that more 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**, while negotiations with EPA and DEQ relating to the Consent Decree 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 (the "First Moratorium"); and

**WHEREAS**, upon approval of the Consent Decree by City Council, the City repealed the First Moratorium and enacted a new development moratorium with Resolution 2023-27 on June 20, 2023, and extended that moratorium to June 20, 2024 via Resolution 2023-34 on November 20, 2023 (the "Second Moratorium"); and

**WHEREAS**, on June 3, 2024, the City Council adopted Resolution 2024-11, repealing the Second Moratorium and enacting a new development moratorium with increased available capacity and other new terms designed to facilitate development, including the creation of an ERU allocation program (the "Third Moratorium"); and

**WHEREAS**, the Third Moratorium is scheduled to expire on December 3, 2024; and

**WHEREAS**, the City has made significant progress in its efforts to alleviate the problems giving rise to the Third Moratorium, and to obtain the additional 190 ERUs described in the April 11, 2024 conditional approval from EPA and DEQ; nevertheless, because of the extent of the improvements needed to obtain those ERUs, as well as to fully alleviate the problems giving rise to the need for the moratorium, those problems still exist; and

**WHEREAS**, the City Council therefore has determined it necessary to extend the expiration date of the Third Moratorium and Resolution 2024-11 by six additional months, to June 3, 2025; and

**WHEREAS**, as additional capacity becomes available, whether as described in the April 11, 2024 conditional approval from EPA and DEQ, through relinquishment of ERUs allocated under the allocation program in the Third Moratorium, or otherwise, the City Council anticipates that additional development projects will be allowed to connect to the sanitary sewer system, and the City Council intends to revisit the terms of the moratorium at that time; 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, THE CITY COUNCIL OF THE CITY OF SANDY RESOLVES THAT:**

Section 1. The expiration date of the June 3, 2024, moratorium and Resolution 2024-11 are hereby extended to June 3, 2025.

Section 2. All terms of the June 3, 2024, moratorium and Resolution 2024-11, other than the expiration date, shall remain in full force and effect.

Section 3. The City Council shall review the moratorium and determine whether there is a need to extend, revise or repeal it no later than June 3, 2025.

Section 4. This Resolution is based on the recitals above and the findings of fact set forth in the attached Exhibit A.

Section 5. This Resolution is effective on the date it is adopted by the City Council.

This Resolution is adopted by the City Council of the City of Sandy this 2nd day of December, 2024.

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Stan Pulliam, Mayor

ATTEST:

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Jeffrey Aprati, City Recorder

## EXHIBIT A

### FINDINGS OF FACT

1. These findings are intended to supplement the findings stated in the recitals to Resolution 2024-24. They are also intended to supplement the findings and recitals in and attached to Resolution 2024-11, 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 December 2, 2024, on the proposed Resolution extending the moratorium and these Findings of Fact. These Findings of Fact and the recitals in Resolution 2024-24 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 subject to the Consent Decree as a result of lack of capacity in its wastewater systems. Although the City has made significant progress toward resolving those capacity issues, and in particular on updating the Wastewater Facilities Master Plan, that master planning process is not anticipated to be completed until 2025. The ERU cap established by the April 11, 2024, conditional approval from EPA and DEQ pursuant to the Consent Decree remains in effect and constitutes a legally binding obligation on the City. 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 June 3, 2024, the City has made significant progress in updating its Wastewater Facilities Master Plan and anticipates completing that process in 2025. The City has also made the following progress:

1. Progressed project designs at the Wastewater Treatment Plant as identified in the conditional approval by EPA and DEQ.
2. Progressed project designs in the collection system to increase capacity.
3. Closed WIFIA loan.
4. Contracted with two construction contractors via a master services on-call agreement.

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

- Process improvements, anticipated to be completed by December 2025.
- Completing the Wastewater System Facilities Plan Amendment, anticipated to be completed by end of 2025.
- Effluent pump station expansion, anticipated to be completed by Summer 2026.
- Equalization basin improvements, anticipated to be completed by Fall 2026.
- Completing design for recommended improvements that emerge from the Facilities Plan Amendment.

Although work remains to be done, the City has made great progress since June 2024. 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 June 3, 2025. This is the first extension of the June 3, 2024, moratorium. This criterion is met.

- 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 November 15, 2024. 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.