



RESOLUTION NO. 2023-34

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 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 Wastewater System Facilities 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 has already performed to improve capacity; and

WHEREAS, the results of the comprehensive capacity analysis must be approved by EPA and DEQ, which is not anticipated to occur until after December 20, 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 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, 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, the City enacted a development moratorium on June 20, 2023; and

WHEREAS, that moratorium is scheduled to expire on December 20, 2023; and

WHEREAS, the City has made significant progress in its efforts to alleviate the problems giving rise to the June 20, 2023 moratorium; nevertheless, because of the extent of the improvements needed to fully alleviate the problems giving rise to the need for the moratorium, and because the results of those efforts will not be known or quantified until the capacity analysis is approved by DEQ and EPA, those problems still exist; and

WHEREAS, the City Council therefore has determined it necessary to extend the expiration date of the June 20, 2023 moratorium and Resolution 2023-27 by six additional months, to June 20, 2024; and

WHEREAS, as additional capacity becomes available and quantified, which is anticipated to occur in the next several months with the approval of the comprehensive capacity evaluation, the City Council anticipates that additional development projects will be allowed to connect to the sanitary sewer system beyond the 300 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 June 20, 2023 moratorium and Resolution 2023-27 are hereby extended to June 20, 2024.

Section 2: All terms of the June 20, 2023 moratorium and Resolution 2023-27, 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 20, 2024.

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 20th day of November, 2023.

Stan Pulliam, Mayor

ATTEST:

Jeffrey Aprati, City Recorder

EXHIBIT A
FINDINGS OF FACT

1. These findings are intended to supplement the findings stated in the recitals to Resolution 2023-XX. They are also intended to supplement the findings and recitals in and attached to Resolution 2023-27, 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 November 20, 2023 on the proposed Resolution extending the moratorium and these Findings of Fact. These Findings of Fact and the recitals in Resolution 2023-XX 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, the results of those efforts will not be known or quantified until the approval by DEQ and EPA of the results of the capacity analysis. A negotiated estimate of the additional capacity resulting from those efforts was incorporated into the Consent Decree and the June 20, 2023 moratorium in the form of the allowance for 300 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 June 20, 2023, the City has completed the comprehensive capacity analysis and “stress test” procedures; the City is now waiting on DEQ and EPA review and approval of the results thereof. In addition, the City continues to work on the next phase of improvements for alternative discharge and wastewater treatment plant expansion as required by the Consent Decree.

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 since June 2023. 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 20, 2024. This is the first extension of the June 20, 2023 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 November 3, 2023.

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