

**CITY OF MAGNOLIA, TEXAS
ORDINANCE 2023-011**

AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS, (“CITY”) EXTENDING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, AUTHORIZATION, AND APPROVALS NECESSARY FOR THE SUBDIVISION, SITE PLANNING, DEVELOPMENT, AND CONSTRUCTION IN THE CITY LIMITS AND EXTRATERRITORIAL JURISDICTION, PROVIDING FOR FINDINGS OF FACT, DEFINITIONS, APPLICABILITY, PURPOSE, ENACTMENT, DURATION, EXTENSION, EXCEPTIONS AND EXEMPTIONS, DETERMINATION AND APPEALS, REPEALER, SEVERABILITY, ENFORCEMENT, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Magnolia (“City Council”), Texas as a duly-elected legislative body, finds that it is facing significant historic commercial and residential growth; and

WHEREAS, the City Council finds that it is in the best interest of the City and its citizens to extend the moratorium enacted by Ordinance O-2022-031 in order to temporarily suspend the acceptance, authorization, and approvals necessary for the subdivision, site planning, development, zoning, and construction on real property in the City limits and extraterritorial jurisdiction; and

WHEREAS, Texas Local Government Code Section 51.001 provides the City general authority to adopt an Ordinance or police regulations that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, The Texas Local Government Code, including Chapter 212 grants the City certain regulation authority concerning construction, land use, nuisances, structures and development-related activities; and

WHEREAS, the City seeks to ensure that impending and future development is conducted in a fiscally-sustainable and environmentally responsible manner; and

WHEREAS, the City Limits and Extraterritorial Jurisdiction (ETJ) of the City are comprised of a combination of topographical and ecological features that create significant development challenges; and

WHEREAS, the City conducted an updated analysis to determine the adequacy of the City’s current regional water facilities and the need beyond the estimated capacity that is expected to result from new property development; and

WHEREAS, upon review of the analysis by the City’s Water Engineer and City Administrator, the City Council has made updated findings contained herein as **Attachment “A”** related to the inadequacy of existing essential public facilities in accordance with Sections 212.135 and 212.136 of the Texas Local Government Code; and

WHEREAS, in light of the updated findings, the City Council finds that certain essential public and private infrastructure, being water facilities throughout the City Limits and ETJ, are inadequate and insufficient to adequately serve new development; and

WHEREAS, relying on the updated analysis provided by the City's Water Engineer and City Staff, the outstanding permits issued by the City prior to this moratorium, and the City's impact fee analysis, the City Council makes the following findings:

1. Taking into account all water that has been committed by contract, the City's water facilities are at capacity; and
2. Based on the contractual commitments that will utilize all additional capacity of the City's water plants, there is currently no additional capacity available to commit to development of lots; and
3. The City has made reasonable progress to provide additional capacity and is in the process of building Wells Numbers 7 and 8, and an additional well in conjunction with a Developer. However, Well Number 7 will not operate a full capacity until late Summer or Early Fall of 2023 and Well Number 8 will not be completed until late Winter 2023 or January of 2024. The City believes that it will need at least two wells operating before it can reasonably determine if its capacity will meet current and contracted needs.
4. This extension of the moratorium is limited to 120 days unless the City determines there is a need for continuing the moratorium, namely not having sufficient capacity to meet current and contracted needs for water.
5. This moratorium should be reasonably limited to property located in the City limits and the ETJ.

WHEREAS, the City continues to take actions to increase the water capacity of the City of Magnolia, but allowing for additional new development with new water service connections will only exacerbate the situation; and

WHEREAS, the City Council finds that a temporary moratorium on the acceptance, authorization, and approvals necessary for the subdivision, site planning, development, and construction in the City Limits and ETJ will prevent the situation from becoming worse, and will allow the City time to address the measures needed to remedy the shortage of essential public facilities, water capacity, and to secure funds to pay for such remedial measures; and

WHEREAS, the City Council has authorized the purchase of additional water plant sites and is planning to design, permit, and build additional water wells in 2024 and 2025; and

WHEREAS, additional evaluation of the existing infrastructure and development are needed to allow for growth and development within the City Limits and ETJ while protecting the health, safety, environment, quality of life, and general welfare of its residents; and

WHEREAS, in recognition of the importance of development permits and/or approvals to the community, the City desires to implement this moratorium for a stated and fixed

time period, and to include a waiver provision in accordance with Local Government Code Chapter 212, Subchapter E; and

WHEREAS, sufficient notice and a hearing have been published and held in accordance with applicable statutes, laws, and regulations to extend a moratorium; and

WHEREAS, the City Council finds that the enactment of this Ordinance is directly related to the immediate preservation of the public peace, health or safety.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS THAT:

SECTION 1. FINDINGS OF FACT: That the City Council of the City of Magnolia does hereby adopt as a part of this Ordinance the several findings of fact as set out in the preamble to this Ordinance and finds that the several conclusions reached therein are true, correct and accurate and are incorporated into this Ordinance by reference as legislative findings of fact as if expressly set forth herein.

SECTION 2. DEFINITIONS: As used in this Ordinance, these terms shall be defined as follows. Terms appearing in this Ordinance but not defined herein shall have the meanings provided in the City's Code of Ordinances, or if not defined by the City then the common meanings in accordance with ordinary usage.

A. Commercial property: means property zoned for or otherwise authorized for use other than single-family use, multifamily use, heavy industrial use, or use as a quarry.

B. Essential public facilities: means water, sewer/wastewater, or storm drainage facilities or street improvements provided by a municipality or private utility.

C. Permit: means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

D. Project: means an endeavor over which a regulatory agency exerts its jurisdiction and for which one (1) or more permits are required to initiate, continue, or complete the endeavor.

E. Property development: means the construction, reconstruction, or other alteration or improvement of residential or commercial buildings or the subdivision or replatting of a subdivision of residential or commercial property.

F. Residential property: means property zoned for or otherwise authorized for single-family or multi-family use.

SECTION 3. APPLICABILITY: The City of Magnolia hereby enacts this Ordinance in
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order to extend the temporary moratorium on the acceptance and processing of certain applications and issuance of particular permits and other forms of municipal authorizations related to specific construction and land development activities. This temporary moratorium applies to all city zoning district uses within the City Limits and to the ETJ.

Unless a project falls within an Exception (as provided below), this temporary moratorium applies to all applications for property development permits.

SECTION 4. PURPOSE: This temporary moratorium is being enacted to: (i) prevent a shortage of essential public facilities, namely water facilities that are operating at capacity, taking into account all water committed with permits and by contract; and (ii) for the protection of the health, safety and well-being of the residents, citizens and inhabitants of the City of Magnolia, Texas, to prevent a shortage of essential public facilities, being water services.

SECTION 5. ENACTMENT: The City of Magnolia hereby enacts this Ordinance implementing a temporary moratorium on the City's acceptance, review, approval, and issuance of permits, authorizations, and approvals necessary for the subdivision of, site planning of, or construction on real property for residential and commercial property development in the City of Magnolia and its ETJ.

SECTION 6. DURATION: The initial duration of this temporary moratorium shall be for a period of one hundred twenty (120) days after enactment of this Ordinance, or repeal of this Ordinance by the City, whichever is sooner. During said period of moratorium, the City shall cease accepting permits, authorizations, and approvals necessary for the subdivision of, site planning of, or construction on real property for residential and commercial property development in the City of Magnolia and its ETJ as provided under all Ordinances that may be related thereto of the City of Magnolia, including all amendments thereto during the period of moratorium.

SECTION 7. EXTENSION: If the City determines that the initial period is insufficient for the City to have two new wells operational with additional capacity to fully meets current and contracted requests for water service and fully complete its study and planning, this Ordinance may be renewed or extended for an additional period of time, necessary to complete the study and implement the recommended actions to alleviate the need for the moratorium and any changes to City codes, policies, and processes in accordance with the time limits as provided by law upon a majority vote of the City Council.

SECTION 8. ADOPTIONS OF PROVISION OF CHAPTER 212: Further, the City of Magnolia adopts verbatim the waiver procedures required by Local Government Code, Section 212.137 on the date the moratorium takes effect and, as applicable, the limitations on the moratorium as specified in the Local Government Code, Section 212.139(a) and (b).

SECTION 9. EXCEPTIONS AND EXEMPTIONS

A. Exceptions. Any property owner who believes that they fall within the below exceptions shall provide notice of the exception at time of application for any permit with the City-approved form. Exceptions are administratively approved or denied. Any exception that is denied may be appealed to the City Council. Exceptions will be

determined within the same time period as the administrative completeness check for each project, or within ten business days, whichever is sooner. If a Grandfathered Development Status Determination Request is required, then the exception can be applied concurrently with the Request but the time frame of the Request shall be controlling.

1. **No Impact Projects.** The temporary moratorium implemented by this Ordinance does not apply to a project that does not:
 - Impact water capacity

To make a determination of whether a project is no impact as listed, an applicant shall apply for an exception to the moratorium.

2. **Ongoing Projects.** The temporary moratorium implemented by this Ordinance does not apply to any projects that are currently, actively in progress for which valid City permits have been issued and have not expired as of December 16, 2022, such being the fifth business day after the date on which the City published notice of the public hearings to consider this Ordinance. The provisions of this Ordinance do not apply to any completed application or plan for development for a permit, plat, verification, rezoning, site plan, approved wastewater plan, or new or revised certificate of occupancy for Property Development that were filed prior to December 16, 2022. New permits applied for as part of a previously approved project may proceed once an exception is applied for and approved as described herein.
3. **Grandfathered Projects.** The temporary moratorium implemented by this Ordinance shall not apply to projects that are grandfathered under as provided by state law. Property owners asserting grandfathered rights under Texas Local Government Code Chapter 245 must submit an application claiming an exception to this temporary moratorium to the planning department for review in accordance with City policy. Grandfathered status can be approved through an approved Grandfathered Development Status Determination Request. New permits applied for as part of a previously vested project may proceed once an exception is applied for and approved as described herein.
4. **Development Agreement:** Property owners with a negotiated approval granted by the City Council providing for construction standards, platting, water, and development rules pursuant to Local Government Code Chapter 212, Subchapter G may apply for an exception in accordance with City policy. New permits applied for as part of a Development Agreement project may proceed once an exception is applied for and approved as described herein.

- B. **Waivers.** Any property owner who does not assert rights under Texas Local Government Code Chapter 245, but who seeks authorization to proceed with the development permitting process during the time of the temporary moratorium can request a waiver. Property owners agreeing to construct certain water infrastructure at property owners' sole expense and who do not require land use modifications inconsistent with the updated comprehensive planning, in accordance with Local

Government Code Chapter 212, Subchapter E may apply for waiver in accordance with City policy.

SECTION 10. DETERMINATIONS & APPEALS

- A. Exceptions.** The Planning Director or their designee shall make all initial determinations regarding the status of all projects seeking to apply for permits during this temporary moratorium and recognition of all Exceptions (as provided herein). Exceptions for projects filed within thirty (30) days of the effective date of this ordinance may be filed without a corresponding permit application. Any exception application filed within this period will be decided within ten (10) business days of receipt. Any exception that is denied may be appealed to City Council or the applicant may apply for a Waiver. An exception may be applied for by lot, project, plat, or all area covered by a particular permit or agreement.
- B. City Council.** City Council shall make a final decision on waivers within 10 days of filing of application.
- C. Waivers.** The decision to approve an Exemption (as provided for above) shall rest solely with the City Council. Any denial will stand until the moratorium is lifted unless the project requesting the waiver has a substantial change and reapplies for a waiver.

SECTION 11. REPEALER: In the case of any conflict between the other provisions of this Ordinance and any existing Ordinance of the City, the provisions of this Ordinance will control.

SECTION 12. SEVERABILITY: If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision.

SECTION 13. ENFORCEMENT: The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this temporary moratorium is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance.

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law and/or equity.

SECTION 14. EFFECTIVE DATE: This Ordinance shall be effective upon expiration of the moratorium on April 20, 2023 and shall extend the moratorium for 120 days.

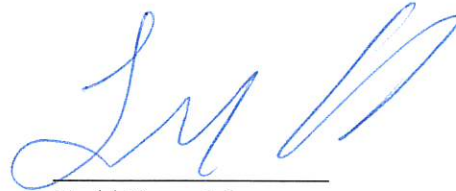
SECTION 15. PROPER NOTICE & MEETING: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open City of Magnolia Ordinance No. O-2023-011

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Meetings Act, Texas Government Code, Chapter 551. Notice and public hearings were also provided as required by Texas Government Code Chapter 212, Subchapter E.

READ & APPROVED on the 8th day of August, 2023.

CITY OF MAGNOLIA:



Todd Kana, Mayor

ATTEST:



Christian Gable, Interim City Secretary



Exhibit A Ord 2023-011

MEMORANDUM

Date: August 2, 2023

To: Don Doering

From: Tim Robertson

Re: City of Magnolia
Water Moratorium Extension

On December 16, 2022, the City of Magnolia (the "City") entered a water moratorium on installation of new meters utilizing the City's water system for connections. At that time there was insufficient water supply facilities to provide additional connections to the system as detailed in a letter by, Baxter & Woodman (B&W), the City's Engineer at the time. Thereafter on April 5, 2023, the City extended the moratorium with an effective date of April 20, 2023, for an additional 120 days. At that time there was insufficient water supply facilities to provide additional connections to the system as detailed in a letter by B&W dated April 5, 2023. This letter reviews the current situation with regards to the existing water system.

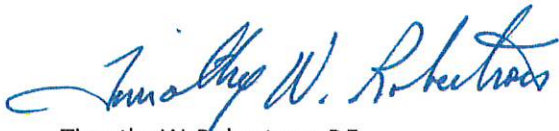
I am pleased to inform you that ongoing water infrastructure improvements have been put in service in recent weeks and the available City water well capacity has increased by approximately 850 gpm. This milestone has allowed the City to start issuing meters for new connections under the provisions of the allocations approved by Council in May 2023.

Currently, the City is issuing meters at a rate of 50% of the approved allocations, but this will increase in the coming days and weeks. The reasons for the current 50% rate are because of temporary well equipment and staff limitations on processing numerous water meter applications. New Water Well No. 7 currently has temporary pumping equipment that will soon be replaced with permanent equipment. Replacing this equipment will require Well No. 7 to be out of service for 2 to 3 weeks once it begins, and it is advisable to temporarily limit the quantity of meters being issued until this is completed since we'll lose the available capacity of the well during the time the equipment is being changed. Once the permanent equipment is installed in Well No. 7, the City will have a total well capacity of approximately 3,800 gpm. The consulting engineer for Well No. 8 (B&W) estimates that it will have 500 gpm capacity once it is completed (currently being constructed at Water Plant No. 2 on Kelly Rd). Completion of Well No. 8 will bring the total firm well capacity across the water system to approximately 4,300 gpm. This 4,300 gpm capacity is scheduled to be available before the end of the year.

While the above noted improvements will get the City past the current moratorium, it will not meet the ultimate needs of the City's growth. The City's current ultimate commitments exceed 11,000 units. It is expected that the growth will continue, and the City will need to continue to add additional capacity after completing the improvements currently under construction. The City is currently planning on adding the necessary water plants to meet the demand over the next several years.

While it is vital for progress to continue and end the current moratorium on issuing new meters, it is just as important to end it at the appropriate time. In my opinion the appropriate time is when there is enough system redundancy to help prevent a water emergency when there is an unexpected equipment failure (such as what recently occurred when existing Well No. 6 required emergency repairs) and simultaneously meet the rising demand on the water system infrastructure. **Accordingly, I recommend the moratorium be extended for 120 calendar days.** As improvements are completed and our system capacity and redundancy grows in the coming weeks and months, I'll keep you informed and stand ready to recommend rescinding the moratorium when justified by conditions and capacities.

Please let me know if you have any questions.



Timothy W. Robertson, P.E.
City Engineer



8/2/2023