

CITY OF MAGNOLIA, TEXAS
ORDINANCE 2023-003

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

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-2023-003**

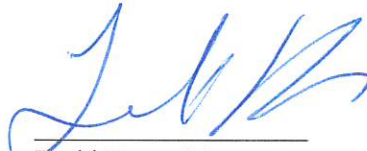
Temporary Moratorium

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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.

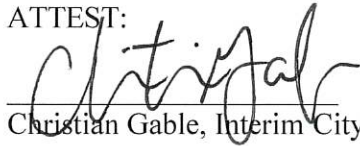
READ & APPROVED on the 11th day of April, 2023.

CITY OF MAGNOLIA:



Todd Kana, Mayor

ATTEST:



Christian Gable, Interim City Secretary

April 5, 2023

Mr. Leonard Schneider
City of Magnolia
2261 Northpark Dr., Suite 445
Kingwood, TX 77339

Subject: City of Magnolia Water Moratorium

Dear Mr. Schneider:

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. In this letter, Baxter & Woodman (B&W), the City's Engineer, will review the current situation with regards to the existing water system.

At initiation of the moratorium the City facilities reflected the capacities shown on page 3 of this letter. As of the date of this letter, the capacities have not changed. The critical capacity currently driving the moratorium is well capacity. The current capacity of 2,216 gallons per minute is capable of serving 3,693 connections. Current existing connections are 3,734 as of February 6, 2023. No additional connections have been added since that date. An active connection is defined as a connection with a meter that indicates use in the last 30 days. Recent information indicates that the number of active connections are below 3,650; however, there is currently no exact number of active connections versus the inactive connections. Beyond the active connections, the City's currently committed to serve 11,604 units.

In addition to the above noted connections, there exists the demand created when the City entered the water moratorium. Connections per month were increasing at approximately 75 connections. We can anticipate that this has continued and perhaps accelerated to 100 connections per month. Based on connections being unavailable for the last 3 months, we can anticipate that 300 additional connections are currently required. This would put the current connection demand at 341 connections beyond the system capacity and continuing to grow. B&W is currently coordinating with developers to determine current demand and realistic future demands. It is anticipated that the collected data will be reviewed and put into a format with recommendations on releasing connections through the waiver format for various developers.

Secondary components of the water supply system are nearing capacity as well. The current total storage capacity is 812,000 gallons which is sufficient for 4,060 connections based on 200 gal/conn. Elevated storage capacity is 400,000 gallons, effective for 4,000 connections of pressure capacity. If booster pumps are utilized, there is capacity for 3,782 connections. The TCEQ typically does not allow the combining of booster pump pressure capacity and elevated storage capacity; however, when combined, the total pressure capacity supports 7,782 connections. We believe that while the storage capacity is marginal, the pressure capacity is sufficient. In addition, storage capacity and elevated capacity will be resolved when

the Guillemont Plant is fully on-line. Until that time, capacity is limited and we recommend that the moratorium remain in place with waivers being issued on a development by development basis until such time as the City determines that adequate supplies are available.

Currently the City is constructing temporary capacity at Well No. 7 of the Guillemont Plant that will support an additional 833 connections initially. When the well is taken to the ultimate capacity later this year, it will support an additional 2,660 connections. The Guillemont plant will also have additional ground storage capacity, elevated storage capacity, booster pump capacity, and hydropneumatic tank capacity. Completion of the plant will support an additional 3027 connections. In addition, the City is constructing Well No. 8 at the Kelly Water Plant which will support an additional 833 connections. Future construction at the Kelly Plant will include another ground storage tank and another hydropneumatics tank. Finally, the City has entered into an agreement with a developer to build Water Plant No. 4 consisting of a new 1,500 gpm well, ground storage tank, booster pumps and hydropneumatic tank. This additional plant is expected to support an additional 2,500 connections.

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 plants to meet the demand over the next several years.

Based on the above noted conditions, it is recommended that the City continue the water moratorium for an additional 120 days. During this time, the City seeks to have Well 7 at operational capacity and Well 8 or Water Plant No. 4 complete which will provide the necessary capacity to consider ending the moratorium. Furthermore, B&W will make additional recommendations on releasing connections through the waiver system as connections become available due to increasing capacity.

Should you have any questions concerning this letter, please contact the undersigned.

Sincerely,


BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS
TBPELS REGISTRATION NO. F21783



Author
MAK:mak

Facility Description		Existing Capacity	
Water Plant Facilities Capacities			
Water Wells	Water Well No. 4 ¹	363	GPM
	Water Well No. 5 ²	360	GPM
	Water Well No. 6 ³	1,493	GPM
	Total Well Capacity (GPM)	2,216	GPM
	Total Well Capacity (conn.)	3,693	Conn.
Storage Tanks	WP 1 - GST	212,000	Gallons
	WP 1 - EST	100,000	Gallons
	WP 2 - GST	200,000	Gallons
	WP 2 - EST	300,000	Gallons
	Total Storage Capacity (Gal)	812,000	Gallons
	Total Storage Capacity (conn.)	4,060	Conn.
System Pressure	WP 1 - HPT	10,000	Gallons
	WP 1 - EST	100,000	Gallons
	WP 2 - EST	300,000	Gallons
	Total HPT Pressure Capacity (Gal)	10,000	Gallons
	Total HPT Pressure Capacity (conn.)	500	Conn.
	Total EST Pressure Capacity (Gal)	400,000	Gallons
	Total EST Pressure Capacity (conn.)	4,000	Conn.
	Total Pressure Capacity (conn.)	4,000	Conn.
Service Pumps	WP 1 Booster Pump	500	GPM
	WP 1 Booster Pump	500	GPM
	WP 1 Booster Pump	895	GPM
	WP 2 Booster Pump	1,000	GPM
	WP 2 Booster Pump	1,000	GPM
	WP 2 Booster Pump	1,000	GPM
	Total Service Pump Capacity (GPM)	4,895	GPM
	Total Service Pump Capacity B2 (Conn.) ⁴	3,782	Conn.
	Total Service Pump Capacity (Conn.)	3,782	Conn.

Notes:

1. Capacity from 3/26/2019 Weisinger test.
2. Capacity from 8/10/2020 Weisinger test.
3. Capacity from 11/24/2019 Weisinger test.
4. Connection count based on ability to meet peak hourly demands (1.03 gpm/conn.) with the largest booster pump out of service.