



ORDINANCE NO. 2022-02

AN ORDINANCE DECLARING A SIX-MONTH MORATORIUM ON NEW CONNECTIONS TO THE CITY WATER SYSTEM IN THOSE AREAS NORTH/NORTHEAST OF BOB'S CREEK FROM NORTH FORK ROAD, AND EAST OF THE INTERSECTION OF NORTH FORK ROAD AND MCDONALD ROAD DUE TO LACK OF WATER SYSTEM ADEQUACY; AND DECLARING AN EMERGENCY

WHEREAS, the City of Nehalem is a home rule city under the laws of the State of Oregon and has a duly acknowledged Comprehensive Land Use Plan; and

WHEREAS, the City of Nehalem operates a municipal water system serving its citizens located within the City limits as well as serving properties located outside the City limits, and

WHEREAS, as the City of Nehalem is a "water supplier" under OAR 333-061-0200(150) and as a water supplier, the City has the obligation of "maintaining a pressure of at least 20 pounds per square inch (psi) at all service connections at all times", and

WHEREAS, pursuant to 2019 Oregon Fire Code, Appendix B; Nehalem City Code 51.10(F)(1) and the City's Water Master Plan, the City has an obligation to ensure that water lines serving any single family dwelling maintain a fire flow of at least 1000 gallons per minute.

WHEREAS, the City Engineer Kyle Ayers has evaluated the City's water system and discovered certain areas along its water lines where this standard of 20 psi may not be maintained at all times, if additional water service connections are made, without additional improvements of water reservoirs, water pumps and other recognized tools to increase water pressure within an area, and

WHEREAS, the City has identified an estimated potential of 133 properties within the proposed moratorium area, as depicted on the map attached as Exhibit A, which could request a new water connection to the City water system, if there was sufficient, stable water pressure in the defined moratorium area, and

WHEREAS, the City had additional testing of certain fire hydrants done, in the affected area, which resulted in a dramatic drop in water pressure within the proposed moratorium area. Allowing additional water service connections in the proposed moratorium area within the Exhibit A mapped area would exacerbate any low-pressure issue which may be periodically experienced at the higher elevations in the proposed moratorium area, and

WHEREAS, the City of Nehalem's acknowledged Comprehensive Land Use Plan requires that the City take actions that are consistent with appropriate state and federal

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Effective Date: _____

environmental quality standards, statutes, programs and policies, including those for water quality, and

WHEREAS, the City of Nehalem's acknowledged Comprehensive Land Use Plan also requires that undeveloped lands within the Urban Growth Boundary (UGB) shall be urbanized only in cases where necessary public services, including water service, can be orderly and efficiently extended; and

WHEREAS, both the Comprehensive Plan and the Nehalem City Code 51.09 provide that the cost of public services or facilities shall be distributed equitably among those residents or land developments creating a need for such services and that large developments or heavy water users should make equitable contributions to the improvement of the water system and shall pay all costs associated with the extension of water lines. For individual properties not located in a subdivision, it is the responsibility of the owner to provide any necessary improvements for sufficient water pressure to their respective properties, without reducing pressure to other users of the system, and

WHEREAS, the City finds there is a demonstrated need to prevent water pressure shortfalls that would occur if the proposed moratorium is not in place; and

WHEREAS, the identified pressure deficiencies are limited to a geographically constrained area, primarily an area outside of the city limits and thus, any moratorium shall be reasonably limited to restricting new water line connections to the properties identified on the maps attached as Exhibit A, and providing any new water connections will exacerbate these existing deficiencies, and

WHEREAS, based upon reasonably available information, the City makes the following findings in support of the above finding of demonstrated need as required by ORS 197.520(2):

A. While a moratorium can logically have a negative economic effect, the lack of infrastructure necessary to maintain 20 psi of pressure at all times causes safety hazards and reduces the overall quality of life which may lead to the same results. Therefore, it makes more sense to control growth through a moratorium until a plan of correction can be identified.

B. The City Engineer's summary explains that the City's water system within this moratorium area is currently experiencing low pressure conditions that violate state water quality standards. Therefore, the City cannot allow any new service connections that place additional water service demand within these restricted areas.

C. The City has made every effort to reduce the impact the proposed moratorium could have on development. First, the area subject to the moratorium restrictions is quite small. The water service constrained area comprises 4.94 acres of residentially-zoned land within the City's UGB and represents approximately 1.6% of the total land area within the City's urban growth boundary. Second, the City's housing needs analysis adopted in 2019 projects a need for only 162 dwelling units (or approximately 40.5 acres) to serve projected growth until 2038. There are 90.25 acres of buildable land (including areas such as Bayside Gardens) outside the moratorium area that provides enough land to meet the projected need. In other words, other areas of the City and

UGB are available in the short term to accommodate the needed housing demand. Additionally, this moratorium only prevents connection to City water. It does not constrain development that might be served by a rural well, as would be appropriate for rural areas outside of the city limits. Finally, as for the City's economic development needs, none of the area affected is zoned to accommodate industrial, employment or commercial uses. For these reasons, particularly as it relates to non-residential development, this moratorium is likely to have a negligible impact on the City's ability to satisfy its economic development demands.

D. Any development or redevelopment proposal that does not require a new water connection will be exempt and allowed to proceed. By not prohibiting development when connected to rural water supplies, this moratorium serves to accommodate the housing and economic development needs of the area affected by the moratorium as much as possible.

WHEREAS, to avoid exacerbating existing deficiencies within the City's domestic water system and to allow time for completion of studies to identify solutions, funding arrangement and the construction of necessary improvements, the City Council finds there is immediate need to impose a moratorium on new water connections for a period of six months pursuant to ORS 197.520(2). The City Council's determination of need for the moratorium is based on reasonable available information, the record of proceedings leading to adoption of this ordinance and the findings contained in this ordinance, and

WHEREAS, the City understands that it has an obligation under ORS 197.530(1) to adopt a program identifying a solution to correct the problem creating the deficiency within 60 days after the effective date of this moratorium and to further that effort, the City has and will continue to convene stakeholder meetings to encourage mutual agreement as to a comprehensive solution and explaining that funding these improvements will be borne by those seeking to connect at the time of development, and

WHEREAS, pursuant to ORS 197.520(1)(a), the City has provided written notice to the Department of Land Conservation and Development on July 29, 2022, which is 45 days prior to the public hearing on September 12, 2022, for adoption of this ordinance, and

WHEREAS, pursuant to ORS 197.520(1)(b), the City has made written findings justifying the need for the moratorium in accordance with ORS 197.520(2), and

WHEREAS, pursuant to ORS 197.520(1)(c), on September 12, 2022, the City Council held a duly noticed public hearing on declaring a moratorium based on the lack of adequate water service infrastructure to allow new connections to the City's water system and the findings which support the moratorium.

NOW, THEREFORE, THE CITY OF NEHALEM ORDAINS AS FOLLOWS:

Section 1. Moratorium Declared.

Based on the foregoing findings, a moratorium based on lack of adequate water service infrastructure for new development is declared for the areas identified in the map attached as Exhibit A.

While this moratorium is in effect, all development shall be subject to the following notice and restrictions:

1. Property owners and representatives shall be notified by staff of the moratorium at the earliest opportunity either during pre-application conferences or through the County land use review process. However, the failure to provide notice shall not alter the development restrictions imposed by this moratorium.
2. The City shall continue to cooperate with the County in processing land use permit applications during the moratorium period, and if approved, appropriate conditions shall be imposed restricting development until the required water pressure necessary to serve the proposed development is in place.
3. No new water connection request may be issued until these pressure and fire flow deficiencies within the existing system are remedied in compliance with the state and local water pressure and fire flow standards and the moratorium is lifted for those areas.

Section 2. Term. This moratorium shall expire six months from the date of its enactment unless otherwise extended in accordance with state law.

Section 3. Effect on Unexpired Land Use Approvals. For properties subject to this moratorium that have an approved land use review that has not yet expired, the expirations date for the approved land use review shall be extended by the length of this moratorium and any moratorium extensions.

Section 4. Reporting. The City Engineer shall regularly report to the City Council on the impact of the moratorium on development and the fire flow and water pressure conditions.

Section 5. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Section 6. Emergency. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

PASSED AND ADOPTED by the City Council on this 12th day of September 2022; and

APPROVED by the Mayor this 12th day of September 2022.

Bill L. Dillard, Jr., Mayor

Attested:

Melissa Thompson-Kiefer, City Manager

First & Second Reading: September 12, 2022

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____

Adopted: September 12, 2022

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____

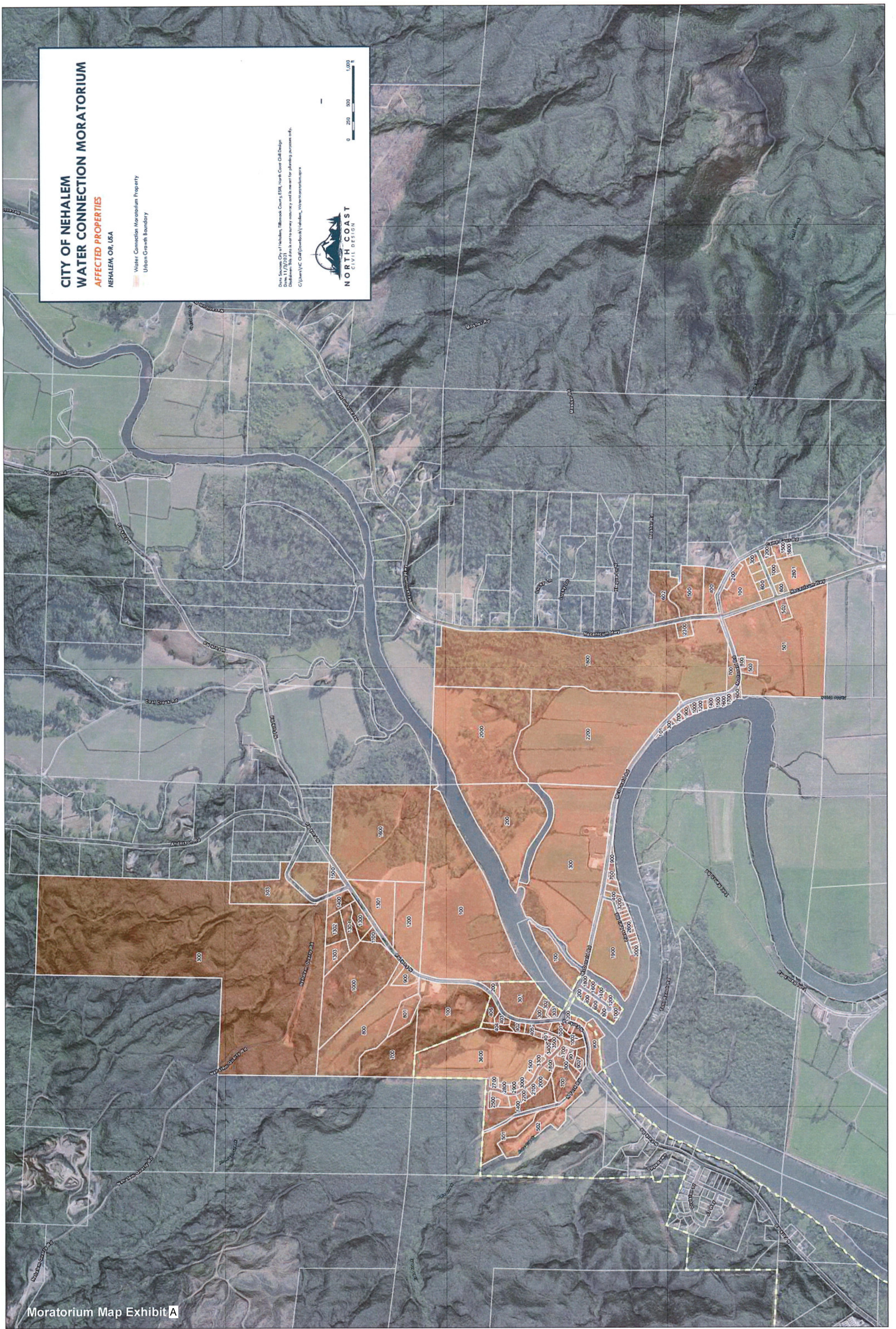
Exhibits:

Exhibit A - Map identifying the areas affected by moratorium

CITY OF NEHALEM WATER CONNECTION MORATORIUM AFFECTED PROPERTIES NEHALEM, OR, USA

Water Connection Moratorium Property
Urban Growth Boundary

Date: Service City of Nehalem, Tillamook County, OR, North Coast Civil Design
Drawn: 11/7/2023
Disclaimer: This plan is not a survey document and is meant for planning purposes only.
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Moratorium Map Exhibit A