

ORDINANCE NO. 1000

AN ORDINANCE OF THE CITY OF WILLIAMS, ARIZONA, ENACTING A MORATORIUM ON THE ACCEPTANCE, AUTHORIZATION, AND APPROVALS NECESSARY FOR THE SUBDIVISION, SITE PLANNING, DEVELOPMENT, AND CONSTRUCTION IN THE CITY LIMITS 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. AS AN EMERGENCY MEASURE THAT WILL BE EFFECTIVE IMMEDIATELY UPON PASSAGE.

WHEREAS, the City Council of the City of Williams, Arizona ("City"), as a duly elected legislative body, finds that it is facing significant historic commercial and residential growth, including growth from tourism that is doubling its wastewater and sewer use; and

WHEREAS, the City Council finds that it is in the best interest of the City and its citizens to enact a moratorium in order to 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, A.R.S. §9-463.06 provides the City authority to adopt a moratorium on certain terms and conditions; 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 conducted an updated analysis to determine the adequacy of the City's current Wastewater Treatment Plant ("WWTP") facilities and the need beyond the current capacity that is expected to result from new property development; and

WHEREAS, upon review of the analysis by the City Manager and City Finance Director, the City Council has made findings contained herein as Exhibit A related to the inadequacy of existing essential public facilities in accordance with A.R.S. §9-463.06; and

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

WHEREAS, relying on the analysis provided by the City's expert consultant and City Staff, the outstanding permits issued by the City prior to this moratorium, and the City's financial position, the City Council makes the findings set forth in Exhibit A, which are incorporated herein by reference; and

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

WHEREAS, the City Council finds that a moratorium on the acceptance, authorization, and approvals necessary for the subdivision, site planning, development, and construction in the City Limits 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, namely WWTP capacity, and to secure funds to pay for such remedial measures; and

WHEREAS, the City Council is planning to design, permit, and build expansion and improvements to the City's WWTP but requires time to qualify for loans, grants, and other funding for such expansion and improvements to the WWTP; and

WHEREAS, additional evaluation of the existing infrastructure and development are needed to allow for growth and development within the City Limits 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 affixed time period, and to include an exception provision in accordance with A.R.S. §9-463.06; and

WHEREAS, sufficient notice and a hearing have been published and held in accordance with applicable statutes, laws and regulations to enact 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 and is an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLIAMS, ARIZONA, THAT:

SECTION 1. FINDINGS OF FACT: That the City Council does hereby adopt as part of this Ordinance the several findings of fact as set out in Exhibit A 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 Code, 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 and multifamily use.

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 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 hereby enacts this Ordinance in order to enact the 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 moratorium applies to all City zoning district uses within the City Limits.

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

SECTION 4. PURPOSE: This moratorium is being enacted to: (i) prevent a shortage of essential public facilities, namely WWTP facilities that are already operating at capacity, taking into account all wastewater and sewer use committed with existing 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, to prevent a shortage of essential public facilities, being wastewater and sewer services.

SECTION 5. ENACTMENT: The City hereby enacts this Ordinance implementing a 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.

SECTION 6. DURATION: The initial duration of this temporary moratorium shall be for a period lasting until July 1, 2027, 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 as provided under all Ordinances that may be related thereto of the City, 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 the expanded and improved WWTP operational with additional capacity to fully meet current and contracted requests for wastewater and sewer service, this Ordinance may be renewed or extended for an additional period of time, necessary 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 PROVISIONS OF A.R.S. §9-463.06: Further, the City adopts verbatim the exception procedures required by A.R.S. §9-463.06 on the date the moratorium takes effect and, as applicable, the limitations on the moratorium as specified in A.R.S. §9-463.06.

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 fifteen (15) business days, whichever is sooner.

1. No Impact Projects. The moratorium implemented by this Ordinance does not apply to a project that does not:

- Impact WWTP capacity

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

2. Ongoing Projects. The 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 the date this Ordinance is passed. 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 the date this Ordinance is passed. 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. Development Agreements. Property owners with a negotiated approval granted by the City Council providing for construction standards, platting, water, and development rules pursuant to A.R.S. §9-500.05 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.

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SECTION 10. DETERMINATIONS AND APPEALS

A. Exceptions. The City Manager or their designee shall make all initial determinations regarding the status of all projects seeking to apply for permits during this moratorium and recognition of all Exceptions (as provided herein). Exceptions for projects filed within 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 fifteen (15) business days of receipt. Any exception that is denied may be appealed to City Council. An Exception may be applied for by lot, project, plan, or all area covered by a particular permit or agreement.

B. City Council. City Council shall make a final decision on appeals within fifteen (15) business days of filing of the appeal. The decision to approve an Exception (as provided for above) shall rest solely with the City Council. Any final denial will stand until the moratorium is lifted unless the project requesting the Exception has a substantial change and reapplies for an Exception.

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/EMERGENCY: This Ordinance shall be effective immediately upon passage as an emergency measure based upon the health and safety issues involved as further detailed above and in the adopted written findings.

SECTION 15. PROPER NOTICE AND 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 Arizona Open Meeting Law. Notice and public hearings were also provided as required by A.R.S. §9-463.06.

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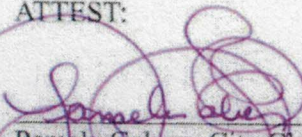
PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Williams, Arizona, this 24 day of August, 2023, by a vote of 5 in favor, and 0 opposed.

CITY OF WILLIAMS
AN ARIZONA CORPORATION



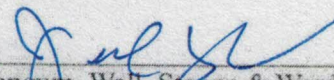
Don Dent, Mayor

ATTEST:



Pamela Galvan, City Clerk

APPROVED AS TO FORM:



Mangum, Wall, Stoops & Warden, P.L.L.C.
City Attorney



(Exhibit A)



City of Williams

Gateway to the Grand Canyon®

Mayor
Don Dent

Vice Mayor
Frank McNelly

City Council
Mike Cowen
Ken Edes
Michelle Campbell
Craig Fritsinger
Lee Payne

City Manager
Tim Pettit

Re: Written Findings of the City of Williams regarding the necessity of a Building Moratorium due to the City Wastewater Treatment Plant (WWTP) being at capacity.

As required by Arizona Revised Statutes §9-463.06(A)(2), the City of Williams (City) hereby makes the following required written findings justifying a building moratorium due to the City WWTP being at capacity with significant time needed to improve and expand the WWTP before it can take on additional capacity to serve new building within the City. In addition, if a building moratorium is not instituted, a clear and imminent danger to health and safety will exist as well as adverse regulatory compliance steps that will be taken by the Arizona Department of Environmental Quality (ADEQ) when the City exceeds the capacity of the City WWTP. ADEQ itself has recommended a moratorium verbally to City staff during a recent inspection.

In 2006 the City began improvements and expansion of its outdated WWTP, which improvements and expansion went on line in 2008. The City WWTP is now a .98 million gallon plant. Until 2019, the City saw very little growth and hardly any capacity added to the plant. At that time, during the winter months as the low season, the WWTP would run at about 40%-45% capacity. In summers, as the high season, it would jump to approximately 60% capacity, mainly with tourism increasing in such months. In late 2020-2021, the City received reports from its contracted operator that flow rates increased and were staying consistently at 75%-80% capacity. The City was concerned with the marked increase and reached out to Carollo, a wastewater design/consultant to perform an evaluation and study of the City WWTP. That process took 16 months including many meetings and fact finding/checking efforts, and resulted in the Carollo study presented to the City Council on April 13, 2023, showing that the City WWTP is now averaging 92% capacity, which is considered to be "at capacity" due to variable flow rates that peak and ebb on a day to day basis.

In 2019, the City had 40 new residential builds and the tourist impact on our infrastructure was estimated about 50% of the population. Carollo's study demonstrated new residential builds averaging 70 per year but the tourist impact to our infrastructure dramatically increased to around 110% of the population. This effectively doubled the population of the City as to how it was impacting the WWTP. Carollo stated that they had never seen that percentage of tourist impact in their prior experience as the majority of a tourist community's commercial impact to wastewater systems are usually at 40%-50% with 50% being extremely high. The Carollo report is attached to this set of written findings as Exhibit A and is incorporated by reference.

Per the City wastewater plant operator and Carollo, ADEQ permitted wastewater plants must be pro-active when they see a sustainable surge in capacity and or a plant reaches 90% of the plant's operating capacity. The entity must begin design and expansion plans to handle projected future capacity. ADEQ has also directly commented on the situation. On May 18, 2023, ADEQ did a surprise inspection of the City WWTP due to excessive capacity shown on the City's required monthly reports. ADEQ found that the City WWTP is operating in compliance with its current permitting and did not cite the City for any violations; however, the ADEQ inspector noted to the City Public Works Director, Aaron Anderson, that it agrees with the recommendation that the City enter into a building moratorium. The City is requesting if ADEQ is willing to make its recommendation in written form as well, but that is not available as of the time of these written findings. If one becomes available, the City will add it to these written findings.

Carollo's study provided a 10% plan of capacity expansion design outline, estimated construction costs, and an estimated schedule as follows:

- **funding** 12-18 months.
- **design/construction documents/ bid docs** 18-24 months.
- **construction to final project/start operation** 36-40 months.

Project from start to finish would take 5-6 years if the City start now, at an estimated cost of \$35-\$40 million.

The City Finance Director analyzed the City's borrowing capacity for such costs. The City currently has \$25+million in debt and the Finance Director estimated it would take approximately three (3) years of payments on such debt before the City would have borrowing capacity that would give the City the ability to borrow \$40 million for design/construction costs. The City has contracted with a municipal financial advisor to assist with grant opportunities and funding mechanisms that would be available to the City.


Based upon the above, the City makes the following written findings:

- The City has a population over 2,900 from the last United States decennial census in 2020, meaning that the City is considered "urban or urbanizable land" under A.R.S. §9-463.06(I)(5).
- For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of essential public facilities that would otherwise occur during the effective period of the moratorium, as per A.R.S. §9-463.06(B).
- The City WWTP is no longer able to handle any additional sewer flows, which is supported by Carollo and ADEQ. Therefore, the City has a compelling need to have a moratorium to avoid clear and imminent danger to the health and safety of the public. These findings support a building moratorium pursuant to A.R.S. §9-463.06(B)(1).
- The City WWTP serves the entire City, as demonstrated in the Carollo report, and the moratorium must by necessity cover the full City boundaries until the WWTP can be expanded. This is a reasonable limitation as to where a shortage of essential public facilities would otherwise occur. The moratorium will not cover any property that has received development approvals before the moratorium based on the sufficiency of the existing City WWTP. This finding is in satisfaction of A.R.S. §9-463.06(B)(2).

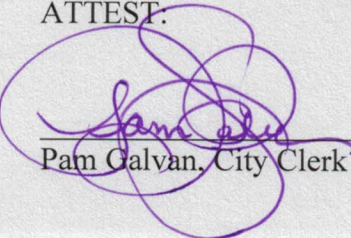
- The City has accommodated the development needs of the areas affected as much as possible, which are the entire City boundaries, but cannot allow additional development to overwhelm the capacity of the City WWTP. This finding is made in accordance with A.R.S. §9-463.06(B)(3) as the WWTP is already at capacity and does not have any remaining essential public facility capacity.
- The moratorium will disallow any construction that requires the discharge of sewer. Examples of permitted construction, not as an exclusive list: Sheds, Garages, Carports, Interior Remodels, and Porches.
- The moratorium will allow any properties or subdivisions that do not currently have access to the City's sanitary sewer system and are currently allowed to develop and build with a Coconino County approved septic system the ability to continue that use. Such areas generally include: Garland Prairie, Pine Meadows Subdivision, Lazy E Subdivision, properties off of Perkinsville Road south of Santa Fe Dam, Airport Road north of Ellen Way for single family dwelling only and properties along Golden Meadows Trail.
- The moratorium will not impact any express provision in a development agreement entered into under A.R.S. §9-500.05 or as defined in §11-1101 governing the rate, timing and sequencing of development, nor does it affect rights acquired pursuant to a protected development right granted according to Chapter 11 of Title 9, or Chapter 9 of Title 11 under the Arizona Revised Statutes. The City will accept applications on City approved forms for landowners under this finding to request a waiver of the moratorium's applicability to such owner's property claiming rights obtained pursuant to a development agreement, a protected development right, or any vested right or by providing the public sewer facilities that are the subject of the moratorium at the landowner's cost.
- During the moratorium the City will not accept applications for any land use changes or approvals that require Staff, Planning and Zoning Commission and or City Council action until the moratorium is lifted, except as described in the prior finding.
- The moratorium shall remain until lifted by the City when it has appropriate WWTP capacity as confirmed by ADEQ. The City and our municipal finance consultant, Stifel, Nicolaus & Company, Inc., have indicated it will be at least three (3) years of needed moratorium while the City works to finance the estimated cost of the required WWTP addition/expansion. Stifel is, and will continue, working with the Finance Director on funding mechanisms for WWTP improvements including possible grants and loans while also working to perform a utility rate study through an appropriate consultant.
- During the moratorium, the City's intent is to seek budget planning that allows the City to proceed with a preliminary estimated 65% plan design to help reduce the design and project time for improving/expanding the City WWTP.

Adopted by the City Council of the City of Williams, as of the 13 day of July, 2023.

ATTEST:



Don Dent, Mayor



Pam Galvan, City Clerk