

CITY OF BASTROP, TX

**EMERGENCY ORDINANCE NO. 2018-1-A**

**AN ORDINANCE OF THE CITY OF BASTROP, TEXAS, EXTENDING EMERGENCY ORDINANCE NO. 2018-1, THE TEMPORARY MORATORIUM STAYING THE ACCEPTANCE AND PROCESSING OF CERTAIN PERMITS IN THE BASTROP 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 of Bastrop, Texas ("City") is a Home-Rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution, and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, the Bastrop City Council ("City Council"), as a duly-elected legislative body, finds that it is facing significant historic and contemporary land use challenges that existing regulations were not designed to address; and

**WHEREAS**, the City Council finds that the City has been actively and diligently engaged in its assessment of the City's drainage and regulatory program, including evaluating its subdivision ordinance, zoning codes, and the uniformity of its permitting process and goals for stormwater plans and improvements; and

**WHEREAS**, Texas Local Government Code Section 51.001 provides the City general authority to adopt an Ordinance or police regulations that are 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**, Texas Local Government Code Chapters 211, 213, 214 and 217 grant 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 that honors the City's rich heritage and unique ecological makeup; and

**WHEREAS**, the City will change drastically if unlimited growth and development should occur under the City's existing Code of Ordinances, which no longer adequately address concerns about the effect of development on the City; and

**WHEREAS**, the City has experienced historical flooding events over the decades and four (4) FEMA-declared disasters in the past three (3) years; and

**WHEREAS**, the City's current development standards and regulations are based on 1983 and 1991 data that is outdated and used a one size fits all approach; and

**WHEREAS**, the City Limits and Extraterritorial Jurisdiction (“ETJ”) are comprised of a combination of ecological and topographical features that create significant drainage and development challenges when using the one size fits all approach; and

**WHEREAS**, in 2016, the City commissioned engineering firm Halff and Associates to study the City’s drainage issues; and

**WHEREAS**, in 2018, Halff and Associates provided the City with Flood Protection Planning Studies for two (2) watersheds in the Bastrop area: Piney Creek and Gills Branch; and

**WHEREAS**, on July 28, 2018, the City Council, accompanied by the Planning and Zoning Commission, participated in a properly posted, public bus tour of key locales around the community, including sites of significant development-related drainage challenges; and

**WHEREAS**, the Gills Branch and Piney Creek Studies document the needs and challenges of the existing drainage and flood mitigation infrastructure across the City Limits and ETJ; and

**WHEREAS**, the City and Bastrop County have been diligently evaluating and assessing the findings in the 2018 Gills Branch and Piney Creek Studies; and

**WHEREAS**, the City held a work session on February 20, 2018 to review the findings of the Gills Branch and Piney Creek Studies with the public; and

**WHEREAS**, the City Council finds that certain essential public and private infrastructure, being drainage and storm water improvements throughout the City Limits and ETJ, are inadequate and insufficient to prevent, mitigate, or minimize flooding events; and

**WHEREAS**, additional evaluation of the existing infrastructure and development of measures to address flooding and drainage 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**, the City has retained a planning consultant firm for the purpose of evaluating the City’s historic, current and anticipated construction attributes, and is developing new standards to preserve the quality of life and to protect the health, safety, and general welfare of the citizens of the City and to direct and manage the rapid growth that is now occurring; and

**WHEREAS**, the City is in the process of studying and evaluating the impact of further development; appropriate impervious cover limitations; the need for drainage and detention improvements; appropriate zoning districts and district regulations; appropriate cut and fill regulations; and issues that will affect future growth and development of the area within its jurisdiction; and

**WHEREAS**, the City is in the process of seeking additional community input; and

**WHEREAS**, the City is in the process of studying and updating its development

ordinances and procedures in order to clarify and improve its planning policies based on the forthcoming regulations, to strengthen the connection between the City's Code of Ordinances and the goals and needs of the City's residents, and to protect the health, safety, environment, quality of life, and general welfare of its residents; and

**WHEREAS**, in order for the City to have adequate and reasonable time to continue to review, evaluate, and revise the City's development ordinances, and to continue to consider the impact of the ordinances upon future growth, public health and safety, development, the natural environment, and the place of architectural improvements, and ecological importance and significance within the City Limits and ETJ, the City wishes to continue to maintain the *status quo* by extending the temporary moratorium, during which certain applications for development permits and/or approvals will continue to be suspended; and

**WHEREAS**, the purpose of prohibiting certain applications for development permits and/or approvals during this study period includes, within limitation, preserving the *status quo* during the planning process, eliminating incentives for hasty applications, facilitating thoughtful and consistent planning, avoiding exploitation of the delays inherent in the municipal legislative process, and preventing applications from undermining the effectiveness of the revised rules by applying for permits and/ or approvals in order to avoid the application of new, possibly more restrictive, development regulations; and

**WHEREAS**, the City Council has identified and considered evidence demonstrating that applying existing development ordinances or regulations and other applicable laws is inadequate to prevent the new development from causing the overcapacity of municipal and private drainage infrastructure or being detrimental to the public health, safety, and welfare in an affected geographical area, that being the City of Bastrop's City Limits and ETJ; and

**WHEREAS**, the City Council has identified and considered evidence including that presented by City of staff, consulting engineering firms, FEMA, and observed during site visits demonstrating the extent of need beyond the estimated capacity of existing essential public and private drainage facilities that is expected to result from new property development, including identifying essential public facilities that are currently operating near, at, or beyond capacity in an affected area, that being the City Limits and ETJ; and

**WHEREAS**, the City Council has identified and considered evidence that alternative methods of achieving the objectives of the moratorium are unsatisfactory, and demonstrating that the municipality has approved a working plan and time schedule for achieving the objectives of the moratorium; and

**WHEREAS**, the City's program for addressing drainage issues during the extension of the temporary moratorium includes planning, regulating, building, and educating; and

**WHEREAS**, the City Council passed Emergency Ordinance No. 2018-1, which established a Temporary Moratorium commencing on August 23, 2018, and created a short-term freeze on the acceptance of applications for subdivision, building permits, or development permits for the purpose of preserving the status quo in order to allow the Council reasonable time to review, conduct research, receive public input, evaluate and establish reasonable policies, and prepare a comprehensive subdivision ordinance for future adoption; and

**WHEREAS**, the City Council passed Emergency Ordinance No. 2018-2-A, which established additional requirements mandating data related to drainage and flooding for the acceptance, processing, and approval of certain projects in the city limits and the extraterritorial jurisdiction during the moratorium; and

**WHEREAS**, the additional requirements mandated by Emergency Ordinance No. 2018-2-A have given the City the ability to assess the impact of these projects on potential future flooding events; and

**WHEREAS**, the City Council adopted a temporary process that allows development to continue in the City of Bastrop requiring projects to be evaluated on a case-by-case basis through pre-application meetings and conformity to specific interim drainage measures to ensure that detrimental development does not occur; and

**WHEREAS**, the temporary process is considered a successful interim solution as of October 31, 2018 having held 41 individual pre-application meetings, issued 212 permits since the inception of the moratorium including 17 new single-family residential, five (5) commercial remodels, one (1) new office complex, and two (2) commercial finish-out permits, and prevented one (1) house from being built in a drainage area; and

**WHEREAS**, the City has retained a planning consultant firm for the purpose of evaluating the City's historic, current and anticipated construction attributes, and is developing new standards to preserve the quality of life and to protect the health, safety, and general welfare of the citizens of the City and to direct and manage the rapid growth that is now occurring; and

**WHEREAS**, the City's planning consulting firm has completed both an in-depth analysis of Downtown Bastrop's DNA and how it functions as a complete neighborhood and an extensive evaluation of the City's current development codes that identified significant challenges and code conflicts that are not aligned with the City's Comprehensive Plan 2036 or considered fiscally sustainable or geographically sensitive; and

**WHEREAS**, the City desires to complete and adopt new development standards including establishing appropriate drainage regulations including impervious cover limitations; appropriate zoning districts and district regulations; appropriate cut and fill regulations; and address identified issues that will affect future growth and development of the area within its jurisdiction; and

**WHEREAS**, the adoption process of new development standards will require community input and will take additional amount of time to complete; and

**WHEREAS**, without the additional requirements mandated by Emergency Ordinance No. 2018-2, the City's review process for drainage and stormwater improvements throughout the City Limits and Extraterritorial Jurisdiction would revert to being inadequate and insufficient to prevent, mitigate, or minimize future flooding events.

**WHEREAS**, Local Government Code Section 212.136 allows a city to extend a moratorium after holding a public hearing on the proposed extension of the moratorium; and adopting written findings that identify the problem requiring the need for extending the

moratorium; describe the reasonable progress made to alleviate the problem; and specify a definite duration for the renewal period of the moratorium.

**WHEREAS**, the City a public hearing on the proposed extension of the moratorium is set for November 15, 2018.

**WHEREAS**, the City finds that the original 90 days for the moratorium was insufficient to complete the series of regulatory modifications, and infrastructure improvements, and thus the extension is necessary

**WHEREAS**, the City Council finds that an extension of the moratorium is necessary to provide the City with the time necessary to continue to properly conduct research, confer with experts, and solicit public input from residents, business owners, property owners, realtors and developers; and

**WHEREAS**, in recognition of the importance of development permits and/ or approvals to the community, the City desires to extend this moratorium through May 21, 2019, and to include a waiver provision in accordance with Texas Local Government Code Chapter 212, Subchapter E.

**WHEREAS**, the City Council finds that the City's review process for drainage and stormwater improvements throughout the City Limits and ETJ are, without the pre-submission meeting and engineering certification requirements implemented in Emergency Ordinance No. 2018-2, inadequate and insufficient to prevent, mitigate, or minimize future flooding events; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AS FOLLOWS:**

**SECTION 1. FINDINGS OF FACT:** The foregoing recitals are based on evidence presented to the City Council, and are hereby 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 or as defined in applicable state statutes.

- 1. 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.
- 2. Essential Public Facilities:** means water, sewer, or storm drainage facilities or street improvements provided by a municipality or private utility.
- 3. Impervious cover:** means structures, buildings, parking areas, roads, and other impermeable man-made improvements covering the natural land surface that prevents infiltration of water.
- 4. 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.

The term does not include Trade Permits, which are excluded from this Ordinance.

**5. 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.

**6. 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.

**7. Property Owner:** means the record owner of real property, or their designated agents (i.e., those holding Power of Attorney or other written authorization to act on behalf of the owner).

**8. Residential Property:** means property zoned for or otherwise authorized for single-family or multi-family use.

**9. Trade Permits:** means permits required by the City's Code of Ordinances for the following work by skilled tradesmen: Electrical, HVAC, Mechanical, and Plumbing. For purposes of this Ordinance, the term also includes Roofing and Irrigation permits.

**SECTION 3. APPLICABILITY:** The City of Bastrop 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 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 was enacted and is being extended to maintain the *status quo*, and to:

1. assess the short-term and long-term comprehensive plan;
2. evaluate regulations for platting and site development;
3. review the City's policies on the acceptance of applications for municipal permits for construction or development;
4. update the City's permitting and planning requirements and processes for drainage and stormwater; and
5. obtain and review public input and expert guidance.

**SECTION 5. ENACTMENT:** The City of Bastrop hereby enacts this Ordinance extending the temporary moratorium on the City's acceptance, review, approval, and issuance of permits in the City Limits and ETJ. The requirements mandated by Emergency Ordinance No. 2018-2-A continue to apply.

**SECTION 6. DURATION:** The extension of the temporary moratorium shall be through May 21, 2019, or until the repeal of this Ordinance by the City, whichever is sooner.

**SECTION 7. EXTENSION:** If the City determines that this extension is insufficient for the City to 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 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. EXCEPTIONS AND EXEMPTIONS:**

**A. Exceptions.**

1. **No Impact Projects.** The temporary moratorium extended by this Ordinance does not apply to a project that does not: (a) increase horizontal density, (b) increase or impact impervious cover, (c) expand the footprint of an existing structure, or (d) alter the current drainage pattern on the property.
2. **Ongoing Projects.** The temporary moratorium extended by this Ordinance does not apply to any projects for which construction is currently, actively in progress, and for which valid City permits have been issued and have not expired (as of the date of the temporary moratorium).
3. **Grandfathered Projects.** The temporary moratorium extended 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.

**B. Exemptions.** 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 the following alternative forms of approval:

1. **Planned Development District:** Property owners with an approval granted by the City Council including enactment of customized zoning regulations through negotiations of specialized rules applicable solely to the proposed project may apply for waiver in accordance with City policy.
2. **Alternate Design Standards:** Property owners with a negotiated approval granted by the City Council for the construction of drainage infrastructure that

exceeds the current standards in the code of ordinances may apply for waiver in accordance with City policy.

3. **ETJ Development Agreement:** Property owners with a negotiated approval granted by the City Council providing for construction standards, platting and development rules pursuant to Texas Local Government Code Chapter 212, Subchapter G may apply for waiver in accordance with City policy.
4. **Waiver:** Property owners agreeing to construct certain drainage infrastructure at property owners' sole expense, in accordance with Texas Local Government Code Chapter 212, Subchapter E may apply for waiver in accordance with city policy.

## **SECTION 9. DETERMINATIONS & APPEALS**

- A. **Determinations.** The Interim Planning Department 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).
- B. **Appeals.** Property Owners seeking to challenge a determination made by the Interim Planning Department Director may appeal that initial determination to the City Manager. Secondary determinations of the City Manager may be appealed to the City Council, whose decision shall be final.
- C. **Exemptions.** The decision to approve an Exemption (as provided for above) shall rest solely with the City Council.

**SECTION 10. 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 11. 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 12. 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 13. EFFECTIVE DATE:** This Ordinance shall be effective immediately upon passage and publication, as provided by Texas Local Government Code Chapter 212, Subchapter E.

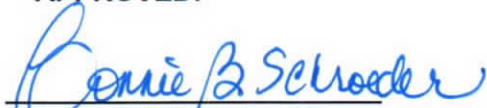


**SECTION 14. PROPER NOTICE & MEETING:** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice and a public hearing were also provided as required by Texas Government Code Chapter 212, Subchapter E.

**READ & ACKNOWLEDGED** on First Reading on the 13th day of November 2018.

**READ & APPROVED** on the Second Reading on the 15th day of November 2018.


**APPROVED:**

  
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Connie B. Schroeder, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
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Alan Bojorquez, City Attorney