

ORDINANCE NO. 2019-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, REPEALING EMERGENCY ORDINANCE NO. 2018-1 [TEMPORARY MORATORIUM] AND IMPLEMENTING ENHANCED PERMIT REVIEW MEASURES TO CONTINUE A HEIGHTENED LEVEL OF EVALUATION FOR CERTAIN BUILDING, CONSTRUCTION AND DEVELOPMENT PERMITS; AND PROVIDING FOR LEGISLATIVE FINDINGS OF FACT, REPEALER, ENACTMENT, DURATION, EXTENSION, SEVERABILITY, ENFORCEMENT, PROPER NOTICE AND MEETING, EFFECTIVE DATE, APPLICABILITY, ALTERNATE APPROVALS, APPEALS, AND DEFINITIONS

WHEREAS, the Bastrop City Council enacted on August 14, 2018, and extended on November 15, 2018, Emergency Ordinance No. 2018-1 implementing a Temporary Moratorium staying the acceptance and processing of certain permits in the Bastrop City Limits and Extraterritorial Jurisdiction (ETJ); and

WHEREAS, the City Council enacted Emergency Ordinance No. 2018-1 to address significant historic and contemporary land use challenges that existing regulations and infrastructure were not designed to address; and

WHEREAS, Emergency Ordinance No. 2018-1 enabled the City of Bastrop, Texas ("City") to actively and diligently engage 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, since the enactment of Emergency Ordinance No. 2018-1, the City has issued 617 permits, demonstrating that completely halting all development activity was not necessary in order to deter detrimental development while the City evaluated and updated its regulations and addressed infrastructure needs; and

WHEREAS, the heightened evaluation of certain permit applications under Emergency Ordinance No. 2018-1 proved sufficient to safeguard the public interest in orderly development while deterring detrimental development; and

WHEREAS, since enactment of Emergency Ordinance No. 2018-1, the City Council has approved Ordinance No. 2019-15, establishing drainage construction and development standards and procedures through the City of Bastrop Stormwater Design Manual; and

WHEREAS, the City Council finds that Emergency Ordinance No. 2018-1, as amended, is no longer necessary to achieve the community's goals under the Building Bastrop initiative; and

WHEREAS, the City Council finds it to be reasonable, necessary, and proper to perpetuate a process and criteria maintaining an elevated level of scrutiny for applications seeking certain construction, building, and development permits for the remainder of the Building Bastrop endeavor; and

WHEREAS, the City Council anticipates that this temporary, elevated level of scrutiny will only be necessary until the additional development standards and procedures are put in place in the fall of 2019; and

WHEREAS, the City is a Home-Rule City acting under the authority granted by 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 with the full power of local self-government under Texas Local Government Code §51.072; 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 that 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.

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

SECTION 1. Repealer: The City Council expressly and specifically repeals the Temporary Moratorium, Emergency Ordinance 2018-1 (as originally approved and as extended). 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 2. Enactment: The City of Bastrop hereby enacts *Attachment "A"*, implementing an Enhanced Permit Review process. While the rules promulgated under *Attachment "A"* constitute an ordinance of the City, this Ordinance and *Attachment "A"* are temporary measures but have the full force of law, and thus are required to be published in the City's Code of Ordinances in accordance with Section 3.17 of the Bastrop Home-Rule Charter.

SECTION 3. Duration: The duration of the Enhanced Permit Review measures implemented by this Ordinance shall be through December 10, 2019, or until the repeal of this Ordinance by the City Council through enactment of the Building Bastrop (B3) codes, whichever is sooner.

SECTION 4. Legislative Findings of Fact: The foregoing recitals and those found in *Attachment "B"* 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 5. 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 6. 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 Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a public 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.

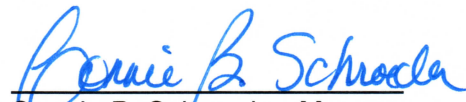
SECTION 7. Proper Notice & Meeting: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice and a public hearing were also provided as required by Texas Government Code Chapter 212, Subchapter E.

SECTION 8. Effective Date: This Ordinance shall be effective immediately upon passage and final adoption, as provided by Texas Local Government Code Chapter 212, Subchapter E.

READ & ACKNOWLEDGED on First Reading on this, the 23rd day of April, 2019.


READ & APPROVED on the Second Reading on this, the 14th day of May, 2019.

APPROVED:



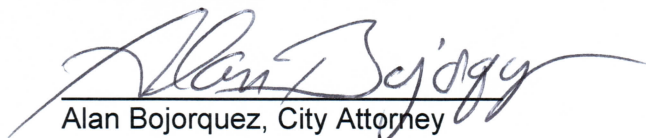
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

City of Bastrop, TX
Code of Ordinances
Enhanced Permit Review

1. **APPLICABILITY:** This Ordinance applies to 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 Ordinance applies to all city zoning districts and uses within the City Limits and the ETJ. This Ordinance shall not apply to the following types of projects:

(a) **No Impact Projects:** endeavors that do not:

- (1) increase horizontal density; or
- (2) increase impervious cover greater than five percent (5%); or
- (3) expand the footprint of an existing structure greater than five percent (5%); or
- (4) alter the current drainage pattern on the property.

Applicants seeking to establish they have a No Impact Project, and thus exempt their project from compliance with the Enhanced Permit Review measures described in this Ordinance, must submit to the City with their permit application a sealed letter from a licensed professional engineer documenting the criteria listed above are satisfied.

(b) **Minimal Drainage Projects:** endeavors that discharge less than one (1) cubic feet of water (post-project). Applicants seeking to establish they have a Minimal Drainage Project, and thus exempt their project from compliance with the Enhanced Permit Review measures described in this Ordinance, must submit to the City with their permit application a sealed letter from a licensed professional engineer documenting the criteria listed in this section is satisfied.

(c) **Fences:** residential fences that comply with section 41 of the zoning ordinance (Bastrop Code of Ordinances Chapter 14) and do not obstruct a drainage way or easement in such a way that a structure or debris is blocking or diverting the drainage channel, as determined by City staff (at staff's sole discretion).

(d) **Ongoing Projects:** endeavors for which construction is currently, actively in progress, and for which valid City permits have been issued that have not expired (as of August 14, 2018).

(e) **Grandfathered Projects:** endeavors that are grandfathered under state law. Property owners asserting grandfathered rights under Texas Local Government Code Chapter 245

must submit an application claiming an exception to this Ordinance in accordance with the City's Grandfathered Development Status ordinance, Ordinance 2019-10.

2. ENHANCED PERMIT REVIEW:

(a) Methodology:

- (1) **Pre-Application Meetings:** Permits shall not be issued until after a pre-application meeting between the Applicant and representatives of the Planning and Development Department.
- (2) **Site Visits:** Permits shall not be issued until after a site visit by representatives of the Planning and Development Department. Submission of an application for a permit shall be construed as in an invitation for representatives of the Planning and Development Department to perform a site visit. Site visits shall be scheduled with the Applicant and/or Property Owner if conducting an effective site visit necessitates traversing the property.
- (3) **Suspension of Deadlines:** The deadlines specified in the Bastrop Code of Ordinances for City action on permit applications in the normal course of business are hereby temporarily suspended. Permit applications will be approved, denied, or addressed in staff comments as soon as reasonable under the circumstances. The City shall strive to provide approval, denial, or staff comments on permit applications within three (3) weeks of submittal.
- (4) **Criteria:** In providing this heightened review of permit applications, city staff will be guided by the policy statement approved by the city council on February 26, 2019, in the form of Resolution 2019-24, which establishes the city's policy goals as creating a fiscally sustainable community through community land use regulations that are authentically Bastrop and geographically sensitive. Emphasis will be given to the need for gridded street layouts, connectivity between large projects, and walkability (i.e., multi-modality). Permit applications for projects that would exacerbate flooding, create unsustainable infrastructure, or be inconsistent with the historic culture of Bastrop, as determined by the City Engineer, will not proceed through the permitting process. The criteria stated in this subsection shall be cumulative of, and in addition to any standards listed elsewhere in the Bastrop Code of Ordinances. If there is a conflict between standards in this subsection and other sections in the Code of Ordinances, this subsection shall govern.

(b) **Staff Approval.** The following permits may be issued by staff without first receiving approval by the City Council.

- (1) **Fence Permits:** residential fences that comply with section 41 of the zoning ordinance (Bastrop Code of Ordinances Chapter 14) so long as they do not obstruct a

drainage way or easement in such a way that a structure or debris is blocking or diverting the drainage channel, as determined by City staff (at staff's sole discretion).

(2) Minor Plats in the ETJ: minor plats, described in section 4.40.1(A)(2) of the subdivision ordinance (Bastrop Code of Ordinances Chapter 16) as being four (4) or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities, so long as drainage calculations showing that the lots will not exceed 60-percent (60%) impervious cover is submitted with the plat application.

(3) Accessory Structures: residential accessory structures with a surface area of one hundred sixty (160) square feet or smaller, so long as they comply with all regulations as outlined in the City of Bastrop's Code of Ordinances.

(c) City Council Approval. All permits not listed above are subject to approval by the City Council.

3. ALTERNATE APPROVALS.

Any property owner who seeks authorization to proceed with the permitting process without complying with the Enhanced Permit Review procedures listed above can request the following alternative forms of approval from the City:

(a) 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 shall be exempt from application of this Ordinance. In considering whether to approve a Planned Development District, the City Council shall evaluate the project in accordance with the criteria listed in section 2(a)(4) of this Ordinance [above].

(b) 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, shall be exempt from application of this Ordinance. In considering whether to approve an ETJ Development Agreement, the City Council shall evaluate the project in accordance with the criteria listed in section 2(a)(4) of this Ordinance [above].

(c) 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 from compliance with this Ordinance issued by the City Council in accordance with city policy.

4. APPEALS

Property Owners challenging application of this Ordinance to their property and/or projects may request to be excluded from the terms and conditions of this Ordinance by pursuing an

appeal as provided below.

- (a) **Initial Review.** Property Owners challenging application of this Ordinance to their property and/or projects may request to be excluded from the terms and conditions of this Ordinance by filing a written notice of appeal with the Planning and Development Department explaining their position and offering evidence supporting their claim.

Within ten (10) business days of receipt of a notice of appeal, a group consisting of the Director of Planning and Development, the City Engineer, and the Public Works Director shall convene to review the evidence and regulations, and make an initial determination as to whether a Property Owner has made a valid claim for being excluded under this Ordinance. The initial determination shall promptly be sent to the Property Owner by U.S. Mail.

- (b) **Secondary Review.** Property Owners seeking to challenge an initial determination may appeal that determination to the City Manager by filing a written notice of appeal with the City Secretary within ten (10) business days of receipt of the written initial determination. Within ten (10) business days of receipt of a notice of appeal, the City Manager shall make a secondary determination as to whether a Property Owner has made a valid claim for being excluded under this Ordinance. The secondary determination shall promptly be sent to the Property Owner by U.S. Mail.

- (c) **Final Review:** Property Owners seeking to challenge a secondary determination may appeal that determination to the City Council by filing a written notice of appeal with the City Secretary within ten (10) business days of receipt of the written secondary determination. Within thirty (30) business days of receipt of a notice of appeal, the City Council shall make a final determination as to whether a Property Owner has made a valid claim for being excluded under this Ordinance. The final determination shall promptly be sent to the Property Owner by U.S. Mail. A final determination may be appealed to district court in accordance with applicable state law.

5. **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.

Applicant: means a person or entity applying for a permit from the City under this Ordinance.

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.

Essential Public Facilities: means water, sewer, or storm drainage facilities or street improvements provided by a municipality or private utility.

Impervious Cover: means structures, buildings, parking areas, roads, and other impermeable man-made improvements covering the natural land surface that prevents infiltration of water.

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 includes (but is not limited to) permits covered by the following sections of the Code of Ordinances:

- §3.16.001: Permits for moving of structures, demolition and site work
- §3.18.002: Permit for construction, alteration or extension; construction or occupancy of permanent structures
- §3.20.051: Permit to erect or install a sign
- §10.03: Plats
- §14.02: Zoning
- §42.1: Site Plan & Development Plan Review

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

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.

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.

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).

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

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.

Legislative Findings of Fact
of the
City Council of the City of Bastrop, TX

1. The City will change drastically if unlimited growth and development should occur under the City's existing Code of Ordinances, which do not currently adequately address concerns about the effect of development on the City; and
2. The City seeks to ensure that impending and future development is conducted in a fiscally sustainable and geographically sensitive manner that honors the City's rich heritage and unique geographic makeup; and
3. The City has experienced historical flooding events over the last four (4) FEMA-declared disasters in the past three (3) years; and
4. The City's existing development standards and regulations were based on 1983 and 1991 data that is outdated and used a one size fits all approach; and
5. The City Limits and Extraterritorial Jurisdiction ("ETJ") are comprised of a combination of geographical and topographical features that create significant drainage and development challenges when using the one size fits all approach; and
6. In 2016, the City commissioned engineering firm Halff and Associates to study the City's drainage issues; and
7. 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
8. 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
9. 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
10. The City and Bastrop County have been diligently evaluating and assessing the findings in the 2018 Gills Branch and Piney Creek Studies; and
11. The City Council held a work session on February 26, 2019, with Strand and Associates [engineers] to review the findings of the Gills Branch and Piney Creek Studies and outline potential action plans with the public; and

12. The City Council held a work session on February 26, 2019, with Verdunity, Inc. [planners and engineers] to review the findings of their public infrastructure fiscal sustainability studies and implications for the community; and
13. 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
14. 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
15. 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 other issues that will affect future growth and development of the area within its jurisdiction; and
16. The City is in the process of seeking additional community input and providing opportunities for meaningful public participation in the planning and rule-making process; and
17. 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
18. 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 the temporary, heightened degree of scrutiny in reviewing certain applications for development permits; and
19. The purpose of carefully evaluating certain applications for development permits and/ or approvals during this study period includes: 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; and
20. The City Council has identified and considered evidence demonstrating that applying existing development ordinances or regulations and other applicable laws is inadequate to

prevent new development from causing the overcapacity of municipal and private drainage infrastructure or from being detrimental to the public health, safety, and welfare in an affected geographical area, that being the area within the City of Bastrop's City Limits and ETJ; and

21. 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 area within the City Limits and ETJ; and
22. The City Council has identified and considered evidence that alternative methods of achieving the objectives of the Enhanced Permit Review methodology are unsatisfactory; and
23. The City Council has approved a working plan and time schedule for achieving the objectives of the Building Bastrop initiative in the Fall of 2019; and
24. The City's program for addressing drainage issues during the temporary permit review includes planning, regulating, building, and educating; and
25. The City Council passed Emergency Ordinance No. 2018-1, which established a Temporary Moratorium commencing on August 23, 2018, for the purpose of creating 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
26. 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 ETJ during the moratorium; and
27. 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
28. The City Council adopted a temporary process that allows development to continue in the City of Bastrop during the Temporary Moratorium, 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
29. Although the purpose of the Temporary Moratorium was to create a short-term freeze on the acceptance of applications for subdivision, building permits, or development permits, since the inception of the moratorium (as of April 18th), the City has:

- (a) held 114 individual pre-application meetings; and
 - (b) issued 617 permits including:
 - 49 new single-family residences,
 - 13 commercial remodels,
 - 4 new commercial buildings including an office complex, self-storage facility, restaurant, and a home furnishings store, and
 - 3 commercial finish-out permits, and
 - (c) prevented one (1) house from unintentionally being built in a drainage area; and
30. 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
31. 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
32. The adoption process of new development standards will require community input and will take additional time to complete; and
33. Texas Local Government Code Section 212.136 allows a city to temporarily suspend or abate the routine permit approval process after holding a public hearing; and adopting written findings that identify the problem requiring the need for extending the short-term measures, describe the reasonable progress made to alleviate the problem, and specify a definite duration for the renewal period of the interim process; and
34. The City finds that the Temporary Moratorium (as enacted and extended) was necessary and proper, but is no longer warranted, although the heightened scrutiny of permit applications remains vital to the Building Bastrop effort; and
35. The City Council finds that continued temporary permit application review measures are 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
36. In recognition of the importance of development permits and/ or approvals to the community, the City desires to extend the interim permit application review methods until September 10, 2019, and to include a waiver provision in accordance with Texas Local Government Code Chapter 212, Subchapter E; and

37. City officials and the city's planning consultants are diligently continuing their work to craft new regulations regarding planning, zoning, platting and construction. As a continuation of the Building Bastrop initiative, the city anticipates adopting new codes in the Fall of 2019 (including updated national / international codes, such as those from the International Code Council); and
38. The City is also evaluating and updating its Master Transportation Plan, which not only affects the framework for all development and redevelopment, it also addresses the primary form of drainage infrastructure in the city – streets; and
39. The City is also in the process of addressing funding and planning for massive public infrastructure improvements (such as the Gill's Branch project) and the formation of a municipal drainage utility; and
40. The City is preparing the engineering and financial data necessary for the City Council to consider creating a municipal drainage utility to fund the construction, maintenance, and operation of new municipal drainage infrastructure.
41. The City Council has approved Ordinance No. 2019-15, establishing drainage construction and development standards and procedures through the City of Bastrop Stormwater Design Manual, and thus other municipal regulations must be evaluated and revised to ensure consistency and compatibility.