

ORDINANCE No. 2019-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, ENACTING CHAPTER 1, ARTICLE 1.20, SECTIONS 1.02.001 THROUGH 1.20.120 OF THE BASTROP CODE OF ORDINANCES; ESTABLISHING CONSTRUCTION AND DEVELOPMENT STANDARDS AND PROCEDURES FOR ASSERTION, ESTABLISHMENT, DETERMINATION, AND RECOGNITION OF POTENTIAL GRANDFATHERED DEVELOPMENT STATUS OR VESTED RIGHTS CLAIMS; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; ENACTMENT; REPEALER; SEVERABILITY; EFFECTIVE DATE; CODIFICATION; PROPER NOTICE & HEARING; POPULAR NAME; PURPOSE; AND SCOPE.

WHEREAS, the City Council of the City of Bastrop ("City Council") seeks to promote orderly, safe and reasonable development of land within the City Limits and Extraterritorial Jurisdiction ("ETJ"); and

WHEREAS, the City Council supports the rights of private property owners and advocates clarity, predictability, and efficiency in the City's regulatory program; and

WHEREAS, generally, the right to develop property is subject to intervening regulations or regulatory changes; and

WHEREAS, the Texas Legislature altered this general rule, through adoption of Chapter 245, Texas Local Government Code ("LGC 245" or "Chapter 245"), by requiring that each permit in a series of permits required for a development project be subject only to the regulations in effect at the time of the application for the project's first permit, and not any intervening regulations; and

WHEREAS, the City Council strives to reduce instances of regulatory ambiguity, and to provide applicants with an increased level of certainty and predictability as to which rules will govern different phases of development projects; and

WHEREAS, with certain exceptions, the owners and developers of projects who have diligently pursued completion of the same should not be subjected to new regulations that substantively and substantially alter how the project can be built; and

WHEREAS, the City Council finds that dormant, outdated, and stagnant projects pose a substantial harm to comprehensive planning and responsible drainage management as well as to traffic safety and human health; and

WHEREAS, the City Council favors the development of construction projects in

accordance with current regulations that are based on modern standards and state-of-the-art technology; and

WHEREAS, the City Council seeks to apply up-to-date regulatory systems to projects to the extent reasonably possible and within the confines of the law; and

WHEREAS, the determination of whether a particular project has changed so as to lose the protections granted by LGC 245 is a question that must be resolved with the City, which is the regulatory agency and property owner for purposes of LGC 245; and

WHEREAS, through LGC 245, the Texas Legislature limited the scope of rules that may be made applicable to certain construction and development projects; and

WHEREAS, the City Council intends the provisions of this Ordinance to supplement and implement LGC 245 and provide guidelines for the application and interpretation of LGC 245; and

WHEREAS, pursuant to Texas Local Government Code Chapter 51, the City has general authority to adopt an ordinance or police regulation that is 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, pursuant to Texas Local Government Code Chapter 211, the City Council has the authority to establish procedures for enforcing its zoning regulations and boundaries; and

WHEREAS, pursuant to Texas Local Government Code Chapter 212, the City Council has the authority to establish rules governing plats and subdivisions of land; and

WHEREAS, pursuant to Texas Local Government Code Chapter 214, the City Council has the general authority to establish rules governing the construction of housing and other structures; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City of Bastrop, a home-rule municipality, to adopt an ordinance establishing a framework within which property owners and the City can determine what projects have obtained Grandfathered Development Status under certain regulations.

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 incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. ENACTMENT: Chapter 1, Section 1.20 of the City of Bastrop Code of Ordinances is hereby established so to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

SECTION 3. REPEALER: All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

SECTION 4. SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

SECTION 5. CODIFICATION: The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

SECTION 6. EFFECTIVE DATE: This Ordinance shall be effective immediately upon passage and publication as provided for by law.

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 was also provided as required by Chapter 52 of the Texas Local Government Code.

READ and APPROVED on *First Reading* on the 23rd day of April 2019.


READ and ADOPTED on *Second Reading* on 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

CODE OF ORDINANCES

CHAPTER 1: GENERAL PROVISIONS

ARTICLE 1.20: UNIFORMITY OF REQUIREMENTS

ENACTMENT PROVISIONS

- 1.20.001 Popular Name:**
This section shall be commonly cited as the "Grandfathered Development Status Ordinance."
- 1.20.002 Introduction:**
Texas Local Government Code Chapter 245 ("LGC 245"), provides an opportunity for landowners or developers to lock-in certain government regulations that apply to a particular development by filing a specific permit application.
- 1.20.003 Purpose:**
This section provides standards and procedures for municipal determination of the alleged Grandfathered Development Status of development Projects. Specifically, this section is enacted to:
- a. provide increased certainty and predictability in the City's regulatory process; and
 - b. guarantee that all Grandfathered Development Status determinations are made by the City only after the City is in receipt of all information necessary to make such a determination; and
 - c. provide a method of administrative review of Grandfathered Development Status Project decisions in accordance with LGC 245 and other applicable vesting laws; and
 - d. ensure that the City recognizes, respects, and protects all Grandfathered Development Status Projects created by LGC 245.

- 1.20.004 Scope:**
- a. This section applies to the City Limits and the Extraterritorial Jurisdiction (“ETJ”).
 - b. This section shall only govern applications and permits covered by LGC 245.
 - c. This section shall not apply to permits or regulations listed as exemptions in LGC 245.004, as may be amended.
 - d. This section shall only govern situations involving a land use or development Project for which the owner or builder requests City approval(s), yet seeks to avoid the application of current municipal regulations by asserting Grandfathered Development Status, as provided by LGC 245.
 - e. This section shall not create any property rights in any application, Project, property, or person. This section shall not enlarge or expand any property right granted by LGC 245.

1.20.005 Policy:
There shall be a bias in the City of Bastrop against dormant or new land development Projects being constructed pursuant to outdated regulations previously repealed by the City Council. It is the preferred policy of the City of Bastrop that all land development Projects for which municipal permits and approvals are needed, be constructed in accordance with current municipal regulations. Limited exceptions to this general rule shall only be allowed when mandated by state law, as procedurally implemented through this section.

1.20.006 Presumption:
It is the policy of the City of Bastrop that construction, development, and/or land use permit applications filed with the City are presumed to be governed by then-current regulations. Exceptions are to be recognized as required by state law in a manner provided herein.

1.20.007 Definitions General:
Words and phrases used in this section shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the

present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

1.20.008 Definitions Specific:

Applicant: A person or entity who submits to the City an application for an approval required by the City. The term shall be restricted to include only the property owner(s), or a duly authorized agent of the property owner(s), as demonstrated in writing to the City.

Application for a Permit: The term as referenced in Texas Local Government Code Chapter 245, as may be amended. The term does not include an application to rezone property.

Board of Adjustment or Zoning Board of Adjustment ("ZBA"): The citizen board appointed by the city council pursuant to Exhibit A, Section 9, of Chapter 14 of the Bastrop Code of Ordinances, as provided by Texas Local Government Code Chapter 211.

City: The City of Bastrop, an incorporated municipality located in Bastrop County, Texas.

City Manager: The City's chief administrative officer, as appointed by the City Council. The term also includes the City Manager's designee.

City Engineer: The individual or entity employed by the City to render engineering services to the City.

City Limits: The incorporated municipal boundaries of the City of Bastrop.

Complete Application: An Application for a Permit that contains all necessary documents and any additional information necessary to comply with the City's Code of Ordinances, either at the time of submittal or within 45 days of the time of submittal.

Grandfathering Review Committee: A group consisting of the Director of Planning and Development, the City Engineer, and the Public Works Director.

Director of Planning and Development: The individual employed by the City Manager to administer land development ordinances and advise the City in relation to the administration, interpretation, and enforcement of the City's Development Code.

ETJ: The extraterritorial jurisdiction of the City of Bastrop.

Grandfathered Development Status: A recognition by the City of an applicant's ability to process a Permit application under pre-existing regulations in accordance with LGC 245.

LGC: The Texas Local Government Code.

LGC 245: Texas Local Government Code Chapter 245.

New Project: A land development endeavor over which the City's municipal regulatory jurisdiction exists that has not previously been formally considered or approved by the City, and for which one or more Permits are required to initiate, continue, or complete the endeavor.

Permit: The term as defined by Texas Local Government Code Chapter 245, as may be amended.

Project: The term as defined by Texas Local Government Code Chapter 245, as may be amended. The term refers to a specific property use and/or improvement undertaken on a particular tract of land as documented in a manner that provides the City with fair notice.

P&Z: The Planning and Zoning Commission of the City.

Public Works Director: The individual appointed by the City Manager to administer the installation and operation of city infrastructure.

1.20.009

Applicable Regulations:

- a. The City shall consider the approval, disapproval, or conditional approval of an application for a Permit covered by LGC 245 solely on the basis of any municipal regulations in effect at the time the Complete Application for the Permit is filed, with the exception of those exemptions listed in LGC 245, as may be amended, and in accordance with the procedures established by this Ordinance.
- b. The extent and scope of what constitutes a Project for purposes of this section and LGC 245 shall be determined by the City based upon the

information provided by the Applicant and those documents filed among the City's records.

- c. The City shall not bestow any form of Grandfathered Development Status on a hypothetical undertaking that is not expressly illustrated or demonstrated to the City at the time of submission of a Complete Application.
- d. Endeavors not submitted for consideration by the Applicant to the City when a prior Permit application for a Project was filed with the City shall be considered New Projects subject to the current regulations. The burden rests on the Applicant to establish that the Project for which approval is sought is the same Project to which Grandfathered Development Status allegedly attached.

1.20.010 Submission:

- a. An Applicant seeking Grandfathered Development Status with the City in accordance with LGC 245 shall submit to the Planning Department a letter explaining the factual and legal bases upon which the Applicant relies.
- b. The Planning Department shall prescribe a form application. Applications may be sought prior to or concurrent with the permitting process.
- c. Such written submission shall include the following:
 - 1. The name, mailing address, phone number, email address, and fax number of the Applicant;
 - 2. The name, mailing address, phone number, email address, and fax number of the property owner, if different than the Applicant;
 - 3. Identification of the property for which the Applicant claims Grandfathered Development Status, including a clear legal description of the exact boundaries of the property encompassed by the Project;
 - 4. Identification of the "Project," as that term is defined in LGC § 245.001(3), as may be amended;
 - 5. Narrative description of the development/construction Project or proposed land use for which a Permit is being sought;
 - 6. Layout of the site, including locations of buildings, streets, utilities, fences, drives, sidewalks, drainage facilities, and any other permanent or temporary structures which may be present at the time

- of application;
7. Identification of the original application for the first Permit in the series of Permits required for the Project, as described in LGC § 245.001(1) and § 245.002(a) and (b), as may be amended;
 8. The date that the first Permit in the series of Permits required for the Project was filed with the City;
 9. A chronology of the history of the Project, with special emphasis on facts establishing that the Project was in progress on or commenced after September 1, 1997, as required by LGC § 245.003, as may be amended;
 10. Identification of each City regulation in effect at the time the original application for the Permit was filed that applies to the Project and that the Applicant contends:
 - A. is grandfathered; and
 - B. controls the approval, disapproval, or conditional approval of an application for a Permit, pursuant to LGC § 245.002(a) and (b), as may be amended;
 11. Identification of each current City regulation for which the applicant seeks an exemption due to the grandfathered development status provided the property owner by LGC 245 or other applicable vesting laws;
 12. Explanation of the applicability of any approval expirations and related requests for extension of approvals;
 13. Photographs, drawings, maps, and previous approvals that would assist the Grandfathering Review Committee in making its determination regarding the application;
 14. A certified land survey of topography showing existing drainage patterns and structures; and
 15. Any other information or supportive materials deemed necessary and requested in writing by the Director of Planning and Development.
- d. Notwithstanding the above, an Applicant may subsequently seek Grandfathered Development Status for other regulations once an initial determination has been made by the City.
 - e. If an Applicant contends that certain City regulations do not apply to the Project, the Applicant is expected to identify, with particularity, all

requirements that the Applicant contends do not apply to the current application. Global references to a particular ordinance, or set of criteria, may be deemed insufficient and the City may consider the request for Grandfathered Development Status determination to be incomplete and, hence, not subject to a staff determination at that time.

- f. The Applicant is responsible for demonstrating to the City that the Project for which approval is sought is the same Project for which Grandfathered Development Status attached, based on fair notice provided to the City.
- g. An application for recognition of Grandfathered Development Status shall not be considered to have been filed with the City, for purposes of this section or LGC 245, until such time as the application is administratively complete. In order to be administratively complete, the application must:
 - 1. contain all materials required by this section;
 - 2. be presented within the time specified by this section; and
 - 3. be accompanied by a check payable to the City for the full amount of the application review fee established by the City Council, as codified in the City's Fee Schedule.

1.20.011 Determination:

- a. The Director of Planning and Development shall promptly forward the Application for Grandfathered Development Status, along with any supporting information or documentation provided, to the Grandfathering Review Committee for review.
- b. Within fifteen (15) business days after a complete Application for Determination of Grandfathered Development Status has been filed, the Grandfathering Review Committee shall issue a written administrative determination approving the application, disapproving the application, or requesting additional information from the Applicant.
- c. If the application is approved, the determination shall identify the date that the application for the original Permit was filed, and, shall identify, with particularity, which claims for Grandfathered Development Status have been recognized and which claims have been rejected.
- d. Prior to rendering a determination, the City or the Applicant may request a pre-determination conference to discuss the Applicant's claim and to ensure that the nature of the claim is fully and completely understood prior to a determination being rendered. The Director of Planning and

Development and/or the Grandfathering Review Committee shall participate in the conference.

- e. If the Committee does not provide a written response to the Applicant within fifteen business (15) days after the application was filed, the application is automatically deemed to have been denied.
- f. The Director of Planning and Development may extend the time period established by this section upon receipt of a written request from the Applicant.
- g. If the Grandfathering Review Committee requests more information from the Applicant, the fifteen (15) day time period will be tolled until the Applicant provides the request information to the Committee.
- h. The Director of Planning and Development is signatory and spokesperson for the Grandfathering Review Committee, for purposes of this section.

1.20.012 Standards:

In determining whether a Project is grandfathered, the City shall consider the following:

- a. **Date of first application:** Which was the first Permit application, plan for development, or plat application that gave the City fair notice of the Project and of the nature of the Permit sought, and on what date was that document filed with the City?
- b. **Fair Notice:** What was the nature and extent of proposed development shown on the Permit application, plan for development, or plat application identified in (a)?
- c. **Consistency:** Is the current Project related to and consistent with the nature and extent of proposed development identified in (b)?
- d. **Subsequent development:** What is the nature and extent of any development of the property, including any permitting or construction activity, that occurred after the date identified in (a)?
- e. **Prior vested rights determinations:** Have there been any prior vested rights determinations made for development of the property, and what were those determinations?
- f. **Regulations:** What are the effective dates of each of the regulations that the Applicant contends do not apply?
- g. **Expiration of prior applications:** Have any prior approved applications for the property expired or been terminated in accordance with the law?

- h. **Exemptions:** How do the exemptions in LGC 245.004, as may be amended, apply?
- i. **Expiration of Project:** Has the Project expired in accordance with Section 1.20.019 of this ordinance or other applicable regulations?
- j. **City Code:** Do any other factors established by the City Code apply?
- k. **State Law:** Do any other factors established by LGC 245 or other state laws apply?

1.20.013 Reconsideration:

- a. If any person believes that the Grandfathering Review Committee's determination under this section is in error, the person shall have the right to request reconsideration. To be actionable, a request for reconsideration by the Grandfathering Review Committee must:
 - 1. be filed with the Director of Planning and Development in writing within fifteen (15) business days of the date of the Grandfathering Review Committee's previous determination or the date of automatic denial;
 - 2. state the reasons why the previous determination should be reversed or modified;
 - 3. present information that has not previously been presented for consideration by the Grandfathering Review Committee;
 - 4. provide an explanation of the legal and factual grounds of the request; and
 - 5. be accompanied by payment of the reconsideration fee established by the City Council, as codified in the City's Fee Schedule.
- b. The Grandfathering Review Committee shall, within fifteen (15) business days of receipt of a Request for Reconsideration that conforms to this section, issue an administrative determination or a statement declining reconsideration. If the Grandfathering Review Committee fails to issue a written determination or statement declining reconsideration within fifteen (15) business days after an application has been received at City Hall, the request for reconsideration is deemed to have automatically been declined.

- c. No person may appeal the Grandfathering Review Committee's determination under this section without first seeking reconsideration.

1.20.014 Appeal to City Manager:

The Grandfathering Review Committee's determination denying an application seeking recognition of Grandfathered Development Status shall automatically be submitted by the City to the City Manager for determination in writing within fifteen (15) business days of the date that the Grandfathering Review Committee declined to reconsider the application. If the City Manager fails to make a written determination within fifteen (15) business days after an appeal has been received, then the appeal is deemed to have automatically been denied.

1.02.015 Appeal to Board of Adjustment:

- a. If any person believes that the City Manager's determination under this section is in error, the person shall have the right to appeal such determination to the City's Zoning Board of Adjustment ("ZBA"). To be actionable, an appeal must be filed with the ZBA in writing within fifteen (15) business days of the date of the City Manager's determination or the date of the City Manager's automatic denial. The written request for an appeal must include:
 - 1. a statement that the appellant sought an appeal from the City Manager, and that the appeal:
 - A. was denied; or
 - B. yielded an erroneous determination regarding the Project's eligibility for Grandfathered Development Status.
 - 2. a statement of the reasons why the determination should be reversed or modified;
 - 3. an explanation of the legal and factual grounds of the appeal; and
 - 4. payment of the appeal fee established by the City Council, as codified in the City's Fee Schedule.
- b. The appellant may also request that the ZBA grant a variance from the regulations at issue under the same standards governing variances for other matters, as set forth in the city's code of ordinances, as amended.
- c. The ZBA shall convene a meeting and act upon an appeal within thirty (30) days of receipt of a written appeal that conforms to this section. If the ZBA fails to make a written determination within thirty (30) days after an appeal has been received, then the appeal is deemed to have automatically been denied.

- d. Notice and a public hearing shall be provided for as established in the code for zoning variance requests.

1.20.016 Extensions:

Any time period established under this section may be extended by the City Manager to a date certain, upon receipt of a written request from the Appellant.

1.20.017 Judicial Review:

Should the Appellant be dissatisfied with the actions of the ZBA, the Appellant may pursue all legal remedies to review the ZBA's decision as set forth in LGC Section 211.011.

1.20.018 Binding Nature:

- a. The City's determinations under this Article, if not timely appealed, shall be immediately filed in the City's files related to the Project and the determination shall be considered binding upon the City, the Appellant, and the property owner (if not the Appellant) for the duration of the Project.
- b. Notwithstanding the binding nature of a determination issued by the Grandfathering Review Committee or City Manager, and any ruling by the ZBA, the City and the property owner may, at any time, enter into a Development Agreement or negotiate the enactment of a Planned Development District that, to the extent authorized by law, modifies the determination and the applicable development regulations to be applied to the Project. The issue of which rules apply to a Permit application may be resolved by mutual agreement. The agreement may contain special terms and conditions, as deemed necessary to protect the public interest.
- c. The City's recognition of Grandfathered Development Status does not prevent the City from requiring the submission of updated engineering reports, site plans, or drainage plans, as may be applicable under current regulations.

1.20.019 Expirations:

- a. **Permits:** Permits issued by the City of Bastrop that are subject to LGC 245 but do not expressly contain an expiration date, shall expire by operation of law two (2) years after issuance. This subsection shall not apply to Permits pursuant to which progress has been made toward the completion of the Project, as determined by LGC 245.005(c), as may be amended.
- b. **Projects:** Projects subject to LGC 245 shall expire by operation of law

five (5) years after an application was filed for the first Permit necessary for the Project. This subsection shall not apply to Permits for which progress has been made toward the completion of the Project, as determined by LGC 245.005(c), as may be amended.

- c. **Incomplete Applications:** Applications shall expire by operation of law 45 days after the date the application is filed if the applicant fails to provide documents or other information necessary to comply with the Code of Ordinances, and if the City provided, not later than ten (10) business days after the date the application is filed, written notice to the applicant of its failure to provide such documents or information.

1.20.120 Transferability:

Grandfathered Development Status, as recognized by the City pursuant to this section, runs with the land. Thus, Grandfathered Development Status is transferable to subsequent owners and occupants.