

CITY OF BASTROP, TX

EMERGENCY ORDINANCE NO. 2018- 2

AN EMERGENCY ORDINANCE OF THE CITY OF BASTROP, TEXAS, ("CITY") ENACTING ADDITIONAL REQUIREMENTS MANDATING DATA RELATED TO DRAINAGE AND FLOODING FOR THE ACCEPTANCE, PROCESSING AND APPROVAL OF CERTAIN PERMITS IN THE CITY LIMITS AND EXTRATERRITORIAL JURISDICTION, PROVIDING FOR FINDINGS OF FACT, APPLICABILITY, PURPOSE, ENACTMENT, EXEMPTIONS, 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 Local Government Code; and

WHEREAS, the Bastrop City Council ("City Council"), as a duly-elected legislative body, finds it is facing significant historic and contemporary drainage and flooding challenges that are not adequately addressed under the existing permitting review process; and

WHEREAS, Texas Local Government Code Section 51.001, provides the City general authority to adopt an Ordinance or police regulations that is 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 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 has determined that it is necessary to study and update its development ordinances and procedures in order to clarify and improve its planning policies based on the forthcoming regulations, strengthening the connection between the City's Code of Ordinances and the goals and needs of the City's citizenry, and to protect the health, safety, environment, quality of life, and general welfare of its citizens; 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 Council finds that the City's current review process for drainage and stormwater improvements throughout the City Limits and Extraterritorial Jurisdiction ("ETJ"), are inadequate and insufficient to prevent, mitigate, or minimize future flooding events; and

WHEREAS, in order for the City to have adequate and reasonable time to review, evaluate and revise the City's development ordinances, and to consider the impact of the ordinances upon future growth, public health and safety, development, and the natural environment, within the City Limits and ETJ, the City wishes to implement additional processes and requirements; and

WHEREAS, the City's Charter Section 3.15 allows for adoption of an ordinance as an emergency measure by a majority vote of the City Council Members after one (1) reading where the ordinance relates to the immediate preservation of the public peace, health or safety; and

WHEREAS, such emergency ordinance shall take effect immediately upon its adoption and execution without a second consideration; and

WHEREAS, for the immediate preservation of the public peace, health and safety, the City finds it necessary to implement the requirement for pre-application engagement with the City's Planning Department and drainage-related certifications regarding impacts on property prior to acceptance of permit applications; 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 thus should be adopted as an emergency measure that is effective immediately upon its adoption and execution without a second reading.

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 legislative findings of fact as if expressly set forth herein.

SECTION 2. APPLICABILITY: The City of Bastrop hereby enacts this Ordinance requiring a pre-application meeting and engineering certification for certain municipal permits or authorizations for construction or development within its City Limits and ETJ.

SECTION 3. PURPOSE: This Ordinance is being enacted for the immediate preservation of the health and safety of persons in the City's jurisdictional area, and to provide additional review of projects that may impact drainage within the City's jurisdiction to prevent or mitigate potential flooding due to development.

SECTION 4. 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.

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

SECTION 5. ENACTMENT: The City of Bastrop hereby enacts this Ordinance requiring that prior to submission of any application for construction or development within the City Limits or ETJ:

- a.** The applicant must request and participate in a pre-submission meeting with the Directors (or their designees) of the City Planning Department, City Engineer's Office, and Public Works Department; and
- b.** All applications for development that may impact drainage must be accompanied by a signed, sealed and dated letter from a registered engineer certifying that they have personally reviewed the topography and completed a field investigation of the existing and proposed flow patterns for stormwater runoff from the subject development to the main stem of all creeks that may impact the project, and build-out conditions allowable by zoning, restrictive covenant or plat note, that the stormwater flows from the subject development will not cause any additional adverse flooding impacts for storms of magnitude up through the one-hundred (100) year event.

No application for a permit may be accepted, processed, or approved by the City except as provided herein.

SECTION 6. EXCEPTIONS:

- a. No Impact Projects.** The requirements of this Ordinance do not apply to a project that does not: (a) increase 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.
- b. Ongoing Projects.** The requirements of this Ordinance do 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 of this temporary moratorium).
- c. Grandfathered Projects.** The requirements of this Ordinance do 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.

SECTION 7. DETERMINATIONS & APPEALS

- a. Determinations.** Property Owners seeking a determination about the possible application of an Exception shall apply for a determination from the Planning Department. The Planning Department Director (or their designee) shall make all initial determinations regarding the status of all projects seeking recognition of all Exceptions (as provided herein).
- b. Appeals.** Property Owners seeking to challenge a determination made by the 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.

SECTION 8. 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 9. 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 10. 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 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 11. EFFECTIVE DATE: This Ordinance shall be effective immediately upon passage.

SECTION 12. 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.