

Maya Sanchez
Mayor
Leticia Miranda
Aldersperson Place 1
David Cantu
Aldersperson Place 2



Miguel Najera Jr.
Aldersperson Place 3
Rebecca Martinez-Juarez
Aldersperson Place 4
George Almanzar
Aldersperson Place 5

ORDINANCE NO. 1601.20A

TEMPORARY MORATORIUM

AN ORDINANCE OF THE CITY OF SAN ELIZARIO, TEXAS, ESTABLISHING A TEMPORARY MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF SUBDIVISION PLATS AND SITE DEVELOPMENT PLANS FOR LAND WITHIN THE CITY OF SAN ELIZARIO AND ITS EXTRATERRITORIAL JURISDICTION; PROVIDING FOR ENFORCEMENT INCLUDING CRIMINAL FINES AND CIVIL PENALTIES OF \$500 PER OFFENSE

RECITALS

- WHEREAS, the City of San Elizario, Texas (“City”) is a Type A, General-Law Municipality; and
- WHEREAS, the City Council of the City seeks to provide for the orderly and safe development of land and use of property within its city limits and extraterritorial jurisdiction (“ETJ”), and to avoid development that may constitute a public nuisance, impose an unreasonable burden on public infrastructure, or unreasonably disturb and devalue adjoining properties; and
- WHEREAS, the Council seeks to preserve the health, safety and general welfare of the community by enacting comprehensive development, subdivision and zoning and land use regulations that provide for orderly growth and development; and
- WHEREAS, the Council needs a reasonable amount of time to study land use management and development planning techniques in order to adopt a comprehensive subdivision ordinance; and
- WHEREAS, the Council has the general authority to regulate land use and development and nuisances pursuant to the Texas Constitution, the City’s police power and the Texas Local Government Code, Chapters 51, 54, 211, 212, 217; and
- WHEREAS, the Council has provided ample public notice and opportunities for citizen input on this ordinance; and
- WHEREAS, the Council finds that a temporary moratorium is necessary and prudent in order to protect the *status quo* so that the Council may study and adopt appropriate administrative and regulatory rules, procedures and ordinances; and

WHEREAS, the Council recognizes the importance of subdivision applications, development permits and/or approvals to the community, and desires to implement this moratorium for a stated and fixed time period, and to include a waiver provision for cases of necessity and undue hardship.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of San Elizario:

SECTION I. FINDINGS OF FACT

The foregoing recitals are adopted as facts and incorporated fully herein.

SECTION II. ENACTMENT

I. PURPOSE AND DEFINITIONS

A. Purpose. This temporary moratorium prohibiting applications for subdivision, zoning, building permits or development permits is adopted so that the Council may promote the public health, safety and general welfare within the City through the regulation of the subdivision of land and laying out of neighborhoods and commercial, industrial or residential developments. The purpose of this ordinance includes, but is not limited to, 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 comprehensive subdivision, zoning, and building ordinances. This ordinance provides temporary regulations while the Council enacts the appropriate administrative and regulatory rules and procedures.

B. Applicability. The provisions of this ordinance shall apply within the City Limits and ETJ, including but not limited to, properties used for the following purposes: Agricultural; Conservation; Single-Family Residential; Multi-Family Residential; Office; Business; Religious/Charitable/Fraternal; Government/Utility/Institutional; Industrial; Parks and Recreational; and Utilities.

C. Definitions. The following words, terms, and phrases shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning. A word or term not defined herein shall be read in accordance with its common or standard definition. Headings and captions are for reference purposes only.

Build: to form by ordering and uniting materials by gradual means into a composite whole. The term includes the acts of developing or expanding upon buildings or structures. The term also includes the installation or placement upon land of a pre-fabricated building. The term also includes the paving of the surface with gravel or impervious cover.

Clear: to make a material change in the character of the land, including but not limited to the extraction of vegetation, removal of brush, cutting of trees, or modification of the natural grade or slope of the land.

Cut: to excavate dirt, stone or other material in order to modify land or alter drainage patterns.

Fill: to deposit or stockpile dirt, stone, construction debris or other material in order to modify land or alter current drainage patterns.

Ordinary Maintenance: activities relating to a property that would be considered ordinary or common for maintaining the property, including but not limited to repairs, or the replacement of materials with identical or in-kind materials. The term expressly omits activities involving the expansion, modification, enlargement, reduction, renovation or remodeling of buildings or structures. The term also omits the cutting away of walls or partitions, cutting or removal of a structural beam or load bearing support; removal or change of means of egress.

Person: any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

2. REQUIRED PERMITS

- A. Site Plans Required.** It is an offense for a person to build or install any streets, alleys, sidewalks, drainage ways, waterlines, or sewer lines in the City Limits or ETJ without first applying for and receiving a permit from the City.
- B. Site Clearance Required.** It is an offense for a person to grade a tract of land, perform a cut of a tract of land deeper than one-foot above natural ground level, or fill a tract of land above one-foot below natural ground level, in the City Limits without first applying for and receiving a permit from the City. This requirement does not apply to ordinary maintenance, or routine farming or agricultural activities.
- C. Subdivisions Required.** It is an offense for a person to divide a tract of land into two or more parts to lay out a subdivision of the tract, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares parks or other parts of the tract intended to be dedicated to public use, or for the use of the purchasers or owners of lots fronting or adjacent to the streets, alleys, squares parks or other parts, in the City Limits or ETJ, without first submitted a plat to the City and receiving plat approval from the City.

3. TEMPORARY MORATORIUM

- A. Permit Suspension.** The City will neither accept nor process applications for these permits:
- 1) Site Plans: The City's acceptance, review and approval of all site plans in the City Limits and ETJ is hereby temporarily suspended and prohibited.
 - 2) Site Clearance: The City's acceptance, review and approval of permits for site clearance, excavation grading or filling for projects in the City Limits is hereby temporarily suspended and prohibited.

- 3) Subdivisions: The City's acceptance, review and approval of plat applications for projects in the City Limits and ETJ is hereby temporarily suspended and prohibited.

B. Duration. This temporary moratorium shall be in effect as of the date of passage for a period of ninety (90) days, and may be extended by a simple majority vote of the Council.

4. WAIVER

A. Requirements. An owner of property may request a waiver from the requirements of this ordinance if one or more of the following three (3) requirements are satisfied:

- (1) Special circumstances or conditions imposing an undue hardship on the property owner because of a unique situation upon the land that is different from other tracts of land.
- (2) The owner can demonstrate in writing a legal right to proceed under regulations that predated incorporation of the City.
- (3) The proposed construction is necessitated by concerns for public safety and will serve to protect the public health, safety and welfare. Specifically, the waiver request must establish that the proposed construction will further one or more of the legitimate public concerns:
 - (a) vehicular traffic safety; or
 - (b) pedestrian traffic safety; or
 - (c) fire prevention and protection; or
 - (d) emergency medical services; or
 - (e) flood damage prevention and protection; or
 - (f) water quality pollution prevention; or
 - (g) sanitary urgency.

B. Process for Application.

- (1) Applicants for a waiver must submit a completed form with attachments to the Mayor. The application, accompanying documentation, and administrative fees must be rendered to the City at least two (2) weeks prior to the public hearing.
- (2) The Applicant must provide written notice to all property owners within two hundred (200) feet of the footprint of the property line for which a waiver is sought. The notice shall contain a description of the waiver and the time, date, and place of the public hearing on the application. Notice must be provided at least ten (10) days prior to the hearing.
- (3) Applications for a waiver shall be reviewed by the Mayor and City Attorney prior to submission to the Council for consideration.
- (4) A waiver may be granted by the Council after a public hearing and upon issuance of written findings that special circumstances or conditions affecting the property in question justify the waiver, and that the granting of the waiver will not have an adverse effect on neighboring properties, or hinder the accomplishment of the goals of the moratorium established by this ordinance.

- (5) An applicant for a waiver may voluntarily request that the application be postponed or withdrawn prior to final action by the Council. In the event of voluntary postponement, no additional administrative fees are due. In the event of re-submission following voluntary withdrawal or denial, the file shall be processed as a new application and additional fees may be collected.

SECTION III. ENFORCEMENT

- A. Civil and Criminal Penalties.** 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. Any violation of this ordinance is hereby declared to be a nuisance.
- B. Criminal Prosecution.** Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a misdemeanor.
- C. Civil Remedies.** 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, including, but not limited to the following:
- (1) Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and
 - (2) A civil penalty up to five hundred dollars (\$500.00) a day when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
 - (3) Other available relief.

SECTION IV. REPEALER AND SEVERABILITY

REPEALER: All ordinances, 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.


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 V. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication in the city's official newspaper.

PASSED AND APPROVED this, the 9th day of August, 2016, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS



Maya Sanchez, Mayor