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## **ORDINANCE NO. 1601.20**

**AN ORDINANCE OF THE CITY OF SAN ELIZARIO, TEXAS, ESTABLISHING A TEMPORARY MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF SUBDIVISION PLATS, SITE DEVELOPMENT PLANS, AND ZONING APPLICATIONS FOR LAND WITHIN THE CITY OF SAN ELIZARIO, PROHIBITING CERTAIN TYPES OF CONSTRUCTION AND DEVELOPMENT; PROVIDING FOR ENFORCEMENT INCLUDING CRIMINAL FINES AND CIVIL PENALTIES OF \$500 PER OFFENSE**

**WHEREAS**, the City Council (“Council”) of the City of San Elizario, Texas (“City”) seeks 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 provide for the orderly and safe development of land and use of property within its city limits and extraterritorial jurisdiction (“ETJ”), by enacting comprehensive development, subdivision, zoning and land use regulations that provide for orderly growth and development; and

**WHEREAS**, the Council has the general authority to regulate land use and development and nuisances pursuant to the Texas Local Government Code, Chapters 51, 54, 211, 212, 217; 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.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ELIZARIO:

## I. ENACTMENT CLAUSES

A. Findings of Fact. The foregoing recitals are adopted as facts and incorporated fully herein.

B. Purpose. This temporary moratorium prohibiting applications for subdivision or site development permits and zoning 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 zoning, and zoning regulations. This ordinance provides temporary regulations while the Council enacts the appropriate administrative and regulatory rules and procedures.

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

D. 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.

E. Definitions.

*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. Subdivision Plats 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 submitting a plat to the City and receiving plat approval from the City.

B. 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.

## **3. TEMPORARY MORATORIUM**

The City will neither accept nor process applications for these permits:

A. 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. Site Plans: The City's acceptance, review and approval of site plan applications pertaining to any streets, alleys, sidewalks, drainage ways, waterlines, or sewer lines in the City Limits and ETJ is hereby temporarily suspended and prohibited.

## **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, with 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.

**5. 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.

## 6. REPEALER AND SEVERABILITY

- A. 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.
- B. 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.

## 7. EFFECTIVE DATE

This ordinance shall take effect immediately upon approval by the Council and publication.

**PASSED & APPROVED** this, the 23 day of February 2016 by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the City of San Elizario, Texas.

## CITY OF SAN ELIZARIO, TEXAS:



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Maya Sanchez, Mayor