

**ORDINANCE NO. 2018-02**

**AN ORDINANCE OF THE CITY OF BROCK, TEXAS ESTABLISHING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF PERMITS, SUBDIVISION PLATS AND SITE DEVELOPMENT PLANS FOR LAND WITHIN THE CITY OF BROCK AND ITS EXTRATERRITORIAL JURISDICTION; PROVIDING FOR ENFORCEMENT INCLUDING CIVIL PENALTIES PER OFFENSE**

**WHEREAS**, the City of Brock, Texas (“City”) is a Type C, General-Law Municipality;  
and

**WHEREAS**, the City Commission 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 Commission 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**, Chapter 212, Subchapter E, Texas Local Government Code, authorizes the City of Brock to adopt and impose a moratorium on the property development of residential and commercial property when other applicable laws are inadequate to prevent the new development from being detrimental to the public health, safety or welfare of the residents of the City; and

**WHEREAS**, the Commission has found per Exhibit A written findings as required by law to implement a moratorium; and

**WHEREAS**, the Commission has found that evidence exists demonstrating that applying existing regulations and other applicable laws are inadequate to prevent new development from causing the overcapacity of municipal infrastructure and being detrimental to the public health, safety, and welfare in this area, and

**WHEREAS**, the City Council found evidence demonstrating that alternative methods of achieving the objectives of the moratorium are unsatisfactory, and

**WHEREAS**, the City Council has found evidence of a working plan and time schedule to achieve the objectives of the moratorium, and

**WHEREAS**, the Commission has found evidence demonstrating the need to adopt new ordinances or regulations, including identification of the harm to the public health, safety, or welfare that will occur if a moratorium is not adopted; and

**WHEREAS**, the Commission has identified objectives or goals to be achieved by adopting new ordinances or regulations during the period the moratorium is in effect; and

**WHEREAS**, the Commission has determined the geographical boundaries in which a moratorium will apply and the specific types of commercial property to which the moratorium will apply; and

**WHEREAS**, the Commission needs a reasonable amount of time to study land use management and development planning techniques to adopt a comprehensive subdivision ordinance; and

**WHEREAS**, the Commission 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 Commission has provided required public notice and opportunities for public hearings for citizen input on enacting a moratorium and this ordinance; and

**WHEREAS**, the Commission finds that a moratorium is necessary and prudent to protect the status quo so that the Commission may study and adopt appropriate administrative and regulatory rules, procedures and ordinances; and

**WHEREAS**, the Commission 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; and

**WHEREAS**, all required notices have been provided; and

**WHEREAS**, on April 23, 2018, the Commission held a first public hearing and considered a moratorium, for which notice was published, and

**WHEREAS**, on April 30, 2018 the Commission held a second public hearing to consider a moratorium and first reading of an ordinance imposing a moratorium, for which notice was published; and

**WHEREAS**, at a second and final reading of the ordinance adopting a moratorium on May 5, 2018 the Commission conducted another public hearing and found that unless a moratorium is imposed, and zoning and development regulations are reviewed, adopted or amended, the conditions as noted in the written findings will exist to the detriment and harm to the public health, safety and welfare to its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BROCK TEXAS:**

## **SECTION I. RECITALS INCORPORATED HEREIN**

The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

## **SECTION II. ENACTMENT**

### **1. PURPOSE AND DEFINITIONS**

- A. Purpose.** This moratorium prohibiting applications for subdivision, zoning, building permits or development permits is adopted so that the Commission 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 to allow the Commission 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 Commission 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 (*not to be construed as an exhaustive list*): all property zoned or authorized for use as Commercial Property or Residential Property whether the property may also be considered Agricultural; 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.

*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.

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

*Fill*: to deposit or stockpile dirt, stone, construction debris or other material 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*: an individual, corporation, limited liability company, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

*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

*Residential property*" means property zoned for or otherwise authorized for single-family or multi-family use.

## 2. REQUIRED PERMITS

- A. **Building Permits Required.** It is an offense for a person to build any residential or commercial property in the City Limits or ETJ without first applying for and receiving, if applicable, a permit 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, water wells, or sewer lines in the City Limits or ETJ without first applying for and receiving a permit from the City.
- C. **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.
- D. **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. MORATORIUM

**A. Permit Suspension.** The City will neither accept nor process applications for these permits:

- (1) **Building Permits:** The City's acceptance, review and approval of all building permits in the City Limits and ETJ, to the fullest extent allowed by law, is hereby temporarily suspended and prohibited.
- (2) **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.
- (3) **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.
- (4) **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 as authorized by law.

### 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 four (4) 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 enactment of the temporary moratorium effective by law as of April 26, 2018 in the City and its ETJ.
- (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.

- (4) The proposed construction is for an existing platted lot for single family residential use only in an existing subdivision or development which was previously platted prior to the City becoming incorporated, and a notice of construction is submitted to the City for verification prior to any attempt to Clear or Build occurs.
  - (a) Replatting is not authorized under this provision unless two (2) or more previously existing platted properties are replatted for one (1) single family residence.

## **B. Process for Application for Items 1-3**

- (1) Applicants for a waiver must submit a completed form with attachments to the Mayor or his designee. The application, accompanying documentation, and administrative fees of \$500.00 must be delivered to the City at least two (2) weeks prior to the public hearing to consider a waiver.
- (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 Commission for consideration.
- (4) A waiver may be granted by the Commission after a public hearing and upon issuance of written findings that:
  - (a) 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 and
  - (b) the applicant agrees to comply with any building, roadway, landscaping or other conditions set forth by the Commission.
- (5) An applicant for a waiver may voluntarily request that the application be postponed or withdrawn prior to final action by the Commission. 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.

## **C. Process for Application for Item 4**

- (1) Applicants for a waiver must submit a completed notice of construction attaching evidence of the existing platted lot in question and when it was platted, and if applicable, approval of the HOA in the subdivision for construction to the Mayor.

- (2) If there is no HOA to approve construction, the Applicant must submit a summary of the proposed building plans including exterior and roofing materials.
- (3) The application, accompanying documentation, and administrative fees of \$300.00 must be rendered to the City at least two (2) weeks prior to any construction being conducted.
- (4) A waiver may be granted by the Mayor as authorized by the Commission without the necessity of a public hearing upon verification that:
  - (a) The property in question meets the elements contained in waiver item 4 and that the HOA, if applicable, has approved the construction or if no HOA, that the Applicant has agreed to any conditions set forth by the City and that 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 and

### **SECTION III. ENFORCEMENT**

- A. Civil 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. Any violation of this ordinance is hereby declared to be a nuisance.
- B. 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, including but not limited to temporary restraining order without the necessity of a prior hearing, 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**

1. **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.

2. **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 final passage and shall apply to any and all of the incorporated city limits and ETJ of Brock that exists now or as may exist as a result of an election to consolidate with Brock West, Texas.

**PASSED ON FIRST READING** the 30<sup>th</sup> day of April, 2018.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Weatherford Democrat, a daily newspaper of general circulation in the City, said publication being on the 26<sup>th</sup> day of April, 2018, the same being prior to a public hearing being held in the Brock ISD Lecture Hall, at 10:00 a.m. on the 5<sup>th</sup> day of May, 2018, to permit the public to be heard.

**PASSED ON SECOND AND FINAL READING** the 5<sup>th</sup> day of May, 2018.

ATTEST:

  
\_\_\_\_\_  
KERRI PRENTICE, TOWN CLERK

  
\_\_\_\_\_  
BILL C. COOPER, MAYOR