



To: Mayor Bill Foulds, Jr. and City Council
From: Laura Mueller, City Attorney
Date: May 17, 2022
RE: Moratorium: Update and Extension
Attorney/Client Privilege

I. Executive Summary

The City of Dripping Springs adopted a moratorium on November 23, 2021 which expired after 90 days. It was then extended to May 21, 2022. Staff and City Council has been reviewing the submission of exceptions and waivers and the approved list is attached. Staff has also been educating the public on the moratorium. To continue to extend the moratorium, the City has to have notice, a public hearing, and a vote by May 21, 2022. In order to extend the moratorium the City must provide updated evidence that doing so is necessary to protect critical infrastructure and the health and safety of the community, and the City follows the procedures and requirements in Local Government Code Chapter 212, Subchapter E. The extension of the moratorium must be based on the continued shortage of essential public facilities. The City can no longer extend the moratorium based on land use or the Comprehensive Plan. The City has reached wastewater capacity.

If the moratorium is extended, permits for new projects will continue to be delayed until the moratorium is lifted. City staff has reviewed the 2021-2022 budget and have determined that the moratorium would have little to no impact on the projected permits because the majority of those projects would be excepted from the moratorium.

Proposed Schedule for Extension:

April 28, 2022 – Newspaper Notice of the Public Hearing on May 17, 2022

May 17 – CC Meeting with Public Hearing discussing extension of the moratorium

120 day moratorium -Can be extended (120 days for wastewater)

Ongoing Council Meetings to approve any waivers. (City Council only has 10 days to approve each waiver request).

II. Basis for Imposing a Moratorium

An extension of the moratorium on property development can be justified in Dripping Springs in the continued need to prevent a shortage of essential public facilities, specifically wastewater. An updated engineering report on wastewater capacity has been provided.

III. Procedures for Extending a Moratorium

Texas Local Government Code (LGC) Chapter 212 establishes procedures, including notice and hearings, and threshold requirements for moratoriums imposed on property development affecting only residential property, commercial property, or both residential and commercial property.

Meeting for Extension: One City Council meeting is required to extend the moratorium.

Notice: 1 Newspaper Notice with the public hearing listed.

Moratorium: Up to 120 day extension Commercial and/or residential.

Required Findings: Shortage of Wastewater Capacity

- a. Summary of evidence demonstrating need beyond existing capacity
- b. Evidence of existing public facilities operating near or at capacity
- c. Portion of capacity committed to development
- d. Impact fee revenue dedicated to finishing infrastructure
- e. Moratorium reasonably limited to city areas where the public facilities are needed

IV. Length of Time for Extension

Infrastructure Moratorium (212.135): Maximum initial period for a moratorium is 120 days.

Extended by holding a public hearing (with newspaper notice) and adopting written findings that:

- a. identify the problem requiring the need for extending the moratorium;
- b. describe the reasonable progress made to alleviate the problem; and
- c. specifying a definite duration for the renewal period of the moratorium. Similar to the initial adoption of the moratorium.

V. Update on the Moratorium

The moratorium has had little impact on the Building Department daily operations. Phone call inquiries have diminished quite a bit – they are now more related to commercial development. The Building Permit Technicians continue to pre-screen the permit application queue to ensure the projects include an approved Exception or Waiver document. If a project does require an Exception or Waiver out building department staff would provide information on how the customer can apply for their exception. Overall, this continues to cause very minimal delays in accepting applications and further processing building permit projects.

To date, the planning department has approved 33 administrative exceptions to the moratorium and City Council has approved 12 waivers. Two waiver requests were denied by City Council; Zoe Life Center and the Over Yonder Nature School. Note With the exception of the Hardy Tract SF-2 and annexation request, none of the approved waivers or exceptions involve zoning map amendments. While staff does not recall any notable predevelopment meetings regarding a zoning amendment for a property within the City Limits since the start of the moratorium, it is likely that staff would encourage the applicant to wait for the development moratorium to expire before applying. The list of approved exceptions and waivers are attached.

An updated wastewater letter is attached to the agenda.

VI. Other Tools if not Extended

Other tools that the City has at its disposal to ensure proper wastewater capacity, transportation capacity, and development regulations if the moratorium is not extended:

- a. Wastewater Agreements: thoroughly negotiated with interim solutions or halt provision of wastewater agreement while capacity is at limit
- b. Platting process that ensures that all documentation is presented up front prior to submittal with no exceptions for missing documentation;

These tools can be used with or without extension of the moratorium. They may be ineffective alone depending on the type of result the City Council is looking for with the extension of the moratorium. They will also assist with projects that get waivers to the moratorium to ensure that the same issues that caused the moratorium are not present in pending projects wherever possible.

VII. Summary

In order for an extension of the moratorium to be valid, the City must present concerns regarding lack of certain essential public facilities and expected need for additional essential public facilities to serve impending growth. The procedural processes and limited timeframes established by statute serve as a protection for developers who may be impacted by a freeze on submission of permits, plats and the like. If the moratorium is extended, permits for new projects will continue to be delayed until the moratorium is lifted.

Statutory Authority for Extension

Sec. 212.136. EXPIRATION OF MORATORIUM; EXTENSION. A moratorium adopted under Section 212.135 or 212.1351 expires on the 120th day after the date the moratorium is adopted unless the municipality extends the moratorium by:

- (1) holding a public hearing on the proposed extension of the moratorium; and
- (2) adopting written findings that:
 - (A) identify the problem requiring the need for extending the moratorium;

- (B) describe the reasonable progress made to alleviate the problem; and
- (C) specify a definite duration for the renewal period of the moratorium.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.1361. NOTICE FOR EXTENSION REQUIRED. A municipality proposing an extension of a moratorium under this subchapter must publish notice in a newspaper of general circulation in the municipality not later than the 15th day before the date of the hearing required by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.