

ORDINANCE NO. 867

AN ORDINANCE OF THE CITY OF MCCLEARY, WASHINGTON, RELATING TO LAND USE AND DEVELOPMENT, ADOPTING A SIX-MONTH MORATORIUM ON ANY PROPERTY DEVELOPMENT WITHIN INDUSTRIAL ZONED, C-2 COMMERCIAL ZONED, R-3 MANUFACTURED HOMES, AND R-1 FAMILY RESIDENTIAL ZONED AREAS ON PROPERTIES GENERALLY LOCATED IN THE WILDCAT CREEK AQUIFER AND CITY WELLHEAD PROTECTED AREAS, WITH ATTENDANT MORATORIUM ON THE FILING AND ACCEPTANCE OF DEVELOPMENT APPLICATIONS FOR, AND THE LOCATION OF, AND ISSUANCE OF PERMITS AND APPROVALS FOR, ANY DEVELOPMENT ON PROPERTIES THEREIN; DIRECTING REVIEW AND CONSIDERATION OF ALLOWED DEVELOPMENT AND USES IN THE WILDCAT CREEK AQUIFER AREA AND CITY WELLHEAD PROTECTED AREAS; PROVIDING THAT THE MORATORIUM SHALL BE IN EFFECT FOR SIX MONTHS, THROUGH JULY 12, 2022; AND DECLARING AN EMERGENCY PROVIDING FOR IMMEDIATE EFFECTIVE DATE.

WHEREAS, RCW 35A.63.220 and other applicable statutes and laws, authorize the City Council to impose a moratorium upon development applications for properties, including, but not limited to, applications for division of land and for building permits; and

WHEREAS, RCW 35A.63.220 provides that a City Council may impose such a moratorium without holding a prior public hearing, provided that a public hearing is held within sixty (60) days of the passage of the moratorium; and

WHEREAS, on January __, 2022, the Mayor of the City of McCleary declared an emergency to exist because of imminent threat to public health, safety and environment caused by increasing development on and within the Wildcat Creek Aquifer and City Wellhead protected areas; and

WHEREAS, as a result of the continuing development within the Wildcat Creek Aquifer and the City Wellhead Area (hereinafter "Protected Areas"), the City Council wishes to declare a moratorium on the filing or processing, applications for division of lands, (including by way of example and not limitation, platting requests), or for land use or development (including by way of example and not limitation, rezones, conditional uses, variances, or building permits), or applications of any kind or nature that would result in any vesting of development, zoning, or similar rights, as that is provided under the laws of this State, for those lands located within the area outlined on attachment "A" to this Ordinance for a period of six months following the passage of this Ordinance, pursuant to the provisions and limitations of applicable law; and

WHEREAS, when deemed necessary and appropriate, and subject to certain limitations, the City, as a City organized under the provisions of Title 35A of the Revised Code of Washington, has the authority, pursuant to RCW 35A.63.220, and other applicable statutes and laws, to impose a moratorium upon development applications for properties, including, but not limited to, applications for the division of land and for building permits; and

WHEREAS, the Council was provided with information which indicates to them that the imposition of a moratorium is necessary and appropriate for those properties described upon the attachment A; and

WHEREAS, the information provided and the agreements include questions as to the appropriateness of development and utilization of said Protected Areas, the steps necessary to identify and protect any environmentally sensitive areas, and the propriety of further development and utilization of said Protected Areas; and

WHEREAS, the City continues to be engaged in an environmental review of the Protected Areas and the risk of a serious and continuing pattern of development in the Protected Areas to the City water supply; and

WHEREAS, the City anticipates reviewing any final reports as prepared by the City's staff so as to determine more fully the propriety of development and building upon the property described in Attachment A.

WHEREAS, the City desires to impose an immediate six-month moratorium on the acceptance of development applications for any "development " as defined in McCleary Municipal Code or "permit" as defined in McCleary Municipal Code, for any property within the Protected Area as described in Attachment A;

NOW, THEREFORE, the City Council of the City of McCleary, Washington, does hereby ordain as follows:

Section 1. The City Council finds upon the basis of the previously submitted and current written materials and testimony as follows:

- a. It would be beneficial to the proper development of properties located within the Protected Areas described on Attachment "A" to this Ordinance for the City to authorize the performance of appropriate analysis and study as to the proper development of said properties, such studies will be beneficial to the City of McCleary and its residents, including those who may now or hereafter occupy those properties, subject to this moratorium.
- b. It would be beneficial to the owners of said property and to the residents of the City for the City, in cooperation with said property owners, City residents, and other agencies working on behalf of the City, to develop a more specific plan for the development of said properties.
- c. If individual development proposals on the property described above are allowed to be filed and processed without prior planning taking place, such filing and processing could lead to development and land uses which would neither be consistent with the goals, policies, or recommendations of the Comprehensive Plan, as now existing or hereafter amended, nor facilitate the efficient, effective, integrated and optimum development potential of the land located within the City of McCleary.
- d. The properties located within the area designated on Attachment "A" to this Ordinance, have been identified as areas of the City of McCleary that may be critical to the protection of the City of McCleary aquifer.

- f. If the owners of individual parcels of property within the area described above are allowed to file for, and the City commenced the processing of development proposals or building permits without aquifer protection planning first taking place and being adopted by the City, such development may have a substantially negative impact on the properties themselves, as well as remaining properties within the area and upon the economic development of the City in general.
- g. It is necessary for a coordinated plan for development, taking into account the protection of the City water supply and other planning elements to be developed through the joint efforts of the City and the property owners within the area described above.
- h. A temporary prohibition against the acceptance by the City of development applications, including, but not limited to, applications for the division of land and for building permits for said properties, will not unreasonably detrimentally affect said properties.
- i. Steps are currently underway to determine the environmental review of a permanent solution and long-term protection of the Protected Areas with the aid of State and or Federal authorities.
- k. A time period of six months is an appropriate time during which updating of the Comprehensive Plan may occur, review of zoning classifications be undertaken, further progress made on the environmental impact statement for the long-term solution to aquifer protection, a master plan can be developed and proposed to the City Council for adoption, and other analysis and studies can be completed.

Section 2. The City Mayor or his designee is authorized and directed to continue to undertake the development of a proposed program of studies and analysis for further study by the Washington State Department of Ecology and others on aquifer protection and the scoping of such a study to achieve the goals set forth in the prior sections for those properties outlined in attachment "A" to this Ordinance and submit his suggestions to the City Council.

Section 3. The City of McCleary hereby imposes an immediate six-month moratorium of all applications for division of lands, (including by way of example and not limitation, platting requests), or for land use or development (including by way of example and not limitation, rezones, conditional uses, variances, or building permits), or applications of any kind or nature that would result in any vesting of development, zoning, or similar rights, as that is provided under the laws of this State, for those lands located within the area outlined on attachment "A" to this Ordinance.

Section 4 The moratorium imposed by this Ordinance shall commence on the date of the adoption of this Ordinance. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 7 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. This Ordinance shall not be codified in the McCleary Municipal Code.

Section 6. This Ordinance may be proposed and adopted upon one reading.

Section 7. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or before March 12, 2022. The Council shall hold this hearing on _____, 2022. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

Section 8. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 9. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City's acceptance of development applications for property, such applications could become vested, leading to development that could be incompatible with the codes eventually adopted by the City. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent damage to the city public water supply stemming from the submission of a flood of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights, nor will it prohibit all development in the City, because those property owners with exempt applications/permits, those with previously obtained approvals for development or redevelopment may proceed with processing and development, as the case may be.

Section 10. This Ordinance shall be published by an approved summary consisting of the title.

Section 11. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 9, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

THIS ORDINANCE PASSED AND ADOPTED by the City Council of the City of McCleary, Washington, at a regular open public meeting on this _____ day of January, 2022.

Chris Miller, Mayor

ATTEST:

Dani Smith, City Clerk

APPROVED AS TO FORM:

Christopher John Coker, City Attorney