



By *Mickie Matlock*
02/18/2022

ORDINANCE NO. 22-05

AN ORDINANCE OF THE CITY OF GRANBURY, TEXAS, EXTENDING ORDINANCE NO. 21-64, THE MORATORIUM STAYING THE ACCEPTANCE AND PROCESSING OF CERTAIN PERMITS IN THE CENTRAL AND WESTERN GRANBURY CITY LIMITS AND EXTRATERRITORIAL JURISDICTION, PROVIDING FOR FINDINGS OF FACT, DEFINITIONS, APPLICABILITY, PURPOSE, ENACTMENT, DURATION, EXTENSION, EXCEPTIONS AND EXEMPTIONS, DETERMINATION AND APPEALS, REPEALER, SEVERABILITY, ENFORCEMENT, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Granbury, Texas ("City") is a Home-Rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution, and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the Granbury City Council ("City Council"), as a duly-elected legislative body, finds that it is facing significant historic and contemporary land use challenges that existing regulations were not designed to address; and

WHEREAS, the City Council finds that the City has been actively and diligently engaged in its assessment of the City's need for an additional Waste Water Treatment Facility and the requisite Permitting form the Texas Commission on Environmental Quality ("TCEQ"); and

WHEREAS, Texas Local Government Code Section 51.001 provides the City general authority to adopt an Ordinance or police regulations that are for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, Texas Local Government Code Chapters 211, 213, 214 and 217 grant the City certain regulation authority concerning construction, land use, nuisances, structures, and development-related activities; and

WHEREAS, the City seeks to ensure that impending and future development is conducted in a fiscally sustainable and environmentally responsible manner that honors the City's rich heritage and unique ecological makeup; and

WHEREAS, the City has changed drastically due to growth and development occurring utilizing the City's existing treatment facilities, which will no longer adequately address the consumption on the City; and

WHEREAS, in 2017, the City commissioned engineering firm Enprotec/ Hibbs and Todd, to study the City's wastewater treatment issues; and

WHEREAS, in 2017, Enprotec/ Hibbs and Todd provided the City with a study including data necessary to determine the necessity for an additional wastewater treatment facility(s) for a twenty year time frame; and

WHEREAS, the Enprotec/ Hibbs and Todd study documented the needs and challenges of the existing wastewater treatment facility and the need for a new facility for the City Limits and ETJ; and

WHEREAS, the City held a work session on June 5, 2018 to review the findings of the Enprotec/ Hibbs and Todd Studies with the public; and

WHEREAS, the City Council finds that certain essential wastewater treatment facilities were necessary to service the City Limits and ETJ, as the current facilities are inadequate and insufficient; and

WHEREAS, additional wastewater treatment facilities are needed to allow for growth and development within the City Limits and ETJ while protecting the health, safety, environment, quality of life, and general welfare of its residents; and

WHEREAS, in order for the City to have adequate wastewater treatment within the City Limits and ETJ, the City wishes to continue to maintain the status quo by extending the moratorium, during which all applications for plats will continue to be suspended; and

WHEREAS, the purpose of prohibiting all plat applications during this period includes, within limitation, preserving the status quo during the TCEQ approval process; and

WHEREAS, the City Council has identified and considered evidence demonstrating that applying existing wastewater treatment facility is inadequate to prevent any new development from causing the over capacity of the municipal wastewater treatment facility and as being detrimental to the public health, safety, and welfare in an affected geographical area, that being the City of Granbury's City Limits and ETJ as described in "Exhibit B"; and

WHEREAS, the City Council has identified and considered evidence including that presented by City staff, consulting engineering firms, and observed during site visits demonstrating the extent of need beyond the estimated capacity of existing essential public and wastewater treatment facilities that is expected to result from new property development, including identifying essential public facilities that are currently operating near, at, or beyond capacity in an affected area, that being the City Limits and ETJ; and

WHEREAS, the City Council has identified and considered evidence that alternative methods of achieving the objectives of the moratorium are unsatisfactory, and demonstrating that the municipality has approved a working plan and time schedule for achieving the objectives of the moratorium; and

WHEREAS, the City's program for addressing wastewater capacity during the extension of the moratorium includes planning, regulating, and educating; and

WHEREAS, the City Council passed Ordinance No. 21-64, which established a Moratorium commencing on October 25, 2021, and created a short-term freeze on the acceptance of all applications for plats for the purpose of 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 a comprehensive subdivision ordinance for future adoption; and

WHEREAS, Local Government Code Section 212.136 allows a city to extend a moratorium after holding a public hearing on the proposed extension of the moratorium; and adopting written findings that identify the problem requiring the need for extending the moratorium, "Exhibit A"; describe the reasonable progress made to alleviate the problem; and specify a definite duration for the renewal period of the moratorium.

WHEREAS, the City held a public hearing on the proposed extension of the moratorium for February 15, 2022; and extended the moratorium through October 4, 2022; and

WHEREAS, the City finds that the original 120 days for the moratorium was insufficient to complete the series of regulatory approval from TCEQ, thus the extension is necessary; and

WHEREAS, the City Council finds that an extension of the moratorium is necessary to provide the City with the time necessary to continue to obtain the necessary regulatory approval from the TCEQ; and

WHEREAS, in recognition of the importance of development permits and/ or approvals to the community, the City desires to extend this moratorium through October 4, 2022, and to include a waiver provision in accordance with Texas Local Government Code Chapter 212, Subchapter E.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRANBURY, TEXAS, AS FOLLOWS:

SECTION 1. FINDINGS OF FACT

The foregoing recitals are based on evidence presented to the City Council, and are hereby incorporated into this Ordinance by reference as legislative findings of fact as if expressly set forth herein.

SECTION 2. DEFINITIONS

As used in this Ordinance, these terms shall be defined as follows. Terms appearing in this Ordinance but not defined herein shall have the meanings provided in the City's Code of Ordinances, or if not defined by the City then the common meanings in accordance with ordinary usage or as defined in applicable state statutes.

1. **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.
2. **Essential Public Facilities:** means water, sewer, or storm drainage facilities or street improvements provided by a municipality or private utility.
3. **Permit:** means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought. The term does not include Trade Permits, which are excluded from this Ordinance.
4. **Project:** means an endeavor over which a regulatory agency exerts its jurisdiction and for which one (1) or more permits are required to initiate, continue, or complete the endeavor.
5. **Property Development:** means the construction, reconstruction, or other alteration or improvement of residential or commercial buildings or the subdivision, platting or replatting of a subdivision of residential or commercial property.
6. **Property Owner:** means the record owner of real property, or their designated agents (i.e., those holding Power of Attorney or other written authorization to act on behalf of the owner).
7. **Residential Property:** means property zoned for or otherwise authorized for single family or multi-family use.

SECTION 3. APPLICABILITY

The City of Granbury hereby enacts this Ordinance in order to extend the moratorium on the acceptance and processing of all plat applications and issuance of particular Permits and other forms of municipal authorizations related to specific construction and land development activities. This moratorium applies to the city zoning district uses within the City Limits and the ETJ as described on "Exhibit B", attached hereto.

Unless a project falls within an Exception (as provided below), this moratorium applies to all applications for property development plats and permits.

SECTION 4. PURPOSE

This moratorium was enacted and is being extended to maintain the status quo, and to:

1. Obtain and review approval of a permit from TCEQ upon completion of hearings held by the State Office of Administrative Hearings for the building of a wastewater treatment facility.

SECTION 5. ENACTMENT

The City of Granbury hereby enacts this Ordinance extending the moratorium on all plats and permits in the City Limits and ETJ as described on “Exhibit B”.

SECTION 6. DURATION

The extension of the moratorium shall be through October 5, 2022, or until the repeal of this Ordinance by the City, whichever is sooner.

SECTION 7. EXTENSION

If the City determines that this extension is insufficient for the City to receive the necessary permit from TCEQ, this Ordinance may be renewed or extended for an additional period of time necessary to obtain the TCEQ permit in accordance with the time limits as provided by law upon a majority vote of the City Council.

SECTION 8. EXCEPTIONS AND EXEMPTIONS

A. Exceptions.

1. No Impact Projects. The moratorium extended by this Ordinance does not apply to a project that does not: (a) increase horizontal density, (b) increase or impact impervious cover, (c) expand the footprint of an existing structure, or (d) alter the current drainage pattern on the property.
2. Ongoing Projects. The moratorium extended by this Ordinance does not apply to any projects for which construction is currently, actively in progress, and for which valid City permits have been issued and have not expired (as of the date of the moratorium).
3. Grandfathered Projects. The moratorium extended by this Ordinance shall not apply to projects that are grandfathered as provided by state law. Property owners asserting grandfathered rights under Texas Local Government Code Chapter 245 must submit an application claiming an exception to this moratorium to the planning department for review in accordance with City policy.

B. Exemptions. Any property owner who does not assert rights under Texas Local Government Code Chapter 245, but who seeks authorization to proceed with the development permitting process during the time of the moratorium can request the following alternative forms of approval:

1. Planned Development District: Property owners with an approval granted by the City Council including enactment of customized zoning regulations through negotiations of specialized rules applicable solely to the proposed project may apply for waiver in accordance with City policy.
2. Alternate Design Standards: Property owners with a negotiated approval granted by the City Council for the construction of wastewater infrastructure that exceeds the current standards in the code of ordinances may apply for waiver in accordance with City policy.
3. ETJ Development Agreement: Property owners with a negotiated approval granted by the City Council providing for construction standards, platting and development rules pursuant to Texas Local Government Code Chapter 212, Subchapter G may apply for waiver in accordance with City policy.
4. Waiver: Property owners agreeing to construct certain infrastructure at property owners' sole expense, in accordance with Texas Local Government Code Chapter 212, Subchapter E may apply for waiver in accordance with city policy.

SECTION 9. DETERMINATIONS & APPEALS

- A. Determinations. The Director of Public Works or their designee shall make all initial determinations regarding the status of all plat applicants seeking to apply during this moratorium and recognition of all Exceptions (as provided herein).
- B. Appeals. Property Owners seeking to challenge a determination made by the Director of Public Works may appeal that initial determination to the City Manager. Secondary determinations of the City Manager may be appealed to the City Council, whose decision shall be final.
- C. Exemptions. The decision to approve an Exemption (as provided for above) shall rest solely with the City Council.

SECTION 10. REPEALER

In the case of any conflict between the other provisions of this Ordinance and any existing Ordinance of the City, the provisions of this Ordinance will control.

SECTION 11. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision.

SECTION 12. ENFORCEMENT

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 moratorium is

subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance.

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 and/or equity.

SECTION 13. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication, as provided by Texas Local Government Code Chapter 212, Subchapter E.

SECTION 14. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice and a public hearing were also provided as required by Texas Government Code Chapter 212, Subchapter E.

PASSED AND APPROVED on this on this 4th day of January 2022.


JIM JARRATT, MAYOR

ATTEST:


CARLA WALKER, CITY SECRETARY



APPROVED AS TO FORM AND LEGALITY:


JEREMY SORELLE, CITY ATTORNEY



Technical Memorandum

To: Jeremy SoRelle
From: Chris Hay, P.E.
CC: Josh Berryhill, P.E.
Date: September 28, 2021
Subject: City of Granbury Wastewater System Capacity Issues – Treatment Capacity

09/28/2021



A handwritten signature in blue ink, appearing to read 'Chris S. Hay', is written over the bottom right portion of the professional engineer seal.

Background

The City of Granbury (City) is in the process of upgrading the wastewater system through the Phase I Wastewater System Improvements Project (Project). The Project is comprised of upgrades to the existing wastewater treatment plant, construction of a new wastewater treatment plant, and various wastewater collection system (System) improvements. These improvements will address existing System deficiencies that have been highlighted by increased growth that has occurred in recent years, replace existing infrastructure that has reached the end of its useful life, and provide additional capacity for growth in the future.

The City currently has a moratorium in effect in the eastern portion of the system due to existing capacity issues in that area of the system.

Information

The City has continued to experience significant growth and development. Through coordination with the City's Planning and Development department, the number of new submittals for projects has reached the City's wastewater treatment capacity of two (2) million gallons per day (MGD).

eHT does not recommend approval of any new projects until additional wastewater treatment capacity is available. Since the existing wastewater treatment plant is the sole source of treatment capacity, all portions of the system are affected by this capacity issue. The attached exhibit (Exhibit 2) shows the limits of the affected area due to the treatment capacity issue, in addition to the eastern portion of the system that is covered by the previous moratorium.

PE Firm Registration No. 1151
PG Firm Registration No. 50103
RPLS Firm Registration No. 10011900

Exhibit 'B'

