



PLANNING & ZONING COMMISSION SPECIAL MEETING

City of Dripping Springs

Council Chambers, 511 Mercer St, Dripping Springs, TX

Monday, November 15, 2021 at 6:00 PM

Agenda

CALL TO ORDER AND ROLL CALL

Commission Members

Mim James, Chair
James Martin, Vice Chair
Christian Bourguignon
Doug Crosson
John McIntosh
Evelyn Strong
Tammie Williamson

Staff, Consultants & Appointed/Elected Officials

Deputy City Administrator Ginger Faught
City Attorney Laura Mueller
City Secretary Andrea Cunningham
Planning Director Howard Koontz
Planning Assistant Warlan Rivera

PLEDGE OF ALLEGIANCE

PRESENTATION OF CITIZENS

A member of the public who desires to address the Commission regarding any item on an agenda for an open meeting may do so at presentation of citizens before an item or at a public hearing for an item during the Commission's consideration of that item. Citizens wishing to discuss matters not contained within the current agenda may do so, but only during the time allotted for presentation of citizens. Speakers are allowed two (2) minutes to speak during presentation of citizens or during each public hearing. Speakers may not cede or pool time. Members of the public requiring the assistance of a translator will be given twice the amount of time as a member of the public who does not require the assistance of a translator to address the Commission. It is the request of the Commission that members of the public wishing to speak on item(s) on the agenda with a noticed Public Hearing hold their comments until the item(s) are presented for consideration. Speakers are encouraged to sign in. Anyone may request a copy of the City's policy on presentation of citizens from the city secretary. By law no action may be taken during Presentation of Citizens.

BUSINESS

- 1. Public Hearing, Discussion, and Recommendation on an Ordinance of the City of Dripping Springs, Texas ("City") enacting a Temporary Moratorium on the Acceptance, Authorization, and Approvals necessary for the Subdivision, Site Planning, Development, or Construction in the 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.

- a. Staff Report
- b. Public Hearing
- c. Moratorium Ordinance

EXECUTIVE SESSION

The Planning & Zoning Commission for the City of Dripping Springs has the right to adjourn into executive session at any time during the course of this meeting to discuss any matter as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.086 (Economic Development). The Planning & Zoning Commission for the City of Dripping Springs may act on any item listed in Executive Session in Open Session or move any item from Executive Session to Open Session for action.

2. **Consultation with City Attorney related to planning matters, wastewater capacity, comprehensive plan, and processes related to approvals.** *551.071, Consultation with City Attorney.*

UPCOMING MEETINGS

Planning & Zoning Commission Meetings

November 23, 2021, at 6:30 p.m.
December 14, 2021, at 6:30 p.m.
December 28, 2021, at 6:30 p.m.

City Council & Board of Adjustment Meetings

November 16, 2021, at 6:00 p.m. (CC)
November 22, 2021, at 6:00 p.m. (Special CC)
December 7, 2021, at 6:00 p.m. (CC & BOA)
December 21, 2021, at 6:00 p.m. (CC)

ADJOURN

TEXAS OPEN MEETINGS ACT PUBLIC NOTIFICATION & POSTING OF MEETING

All agenda items listed above are eligible for discussion and action unless otherwise specifically noted. This notice of meeting is posted in accordance with Chapter 551, Government Code, Vernon's Texas Codes. Annotated. In addition, the Commission may consider a vote to excuse the absence of any Commissioner for absence from this meeting.

*I certify that this notice of meeting was posted at the City of Dripping Springs City Hall and website, www.cityofdrippingsprings.com, on **November 12, 2021, at 1:00 p.m.***

City Secretary

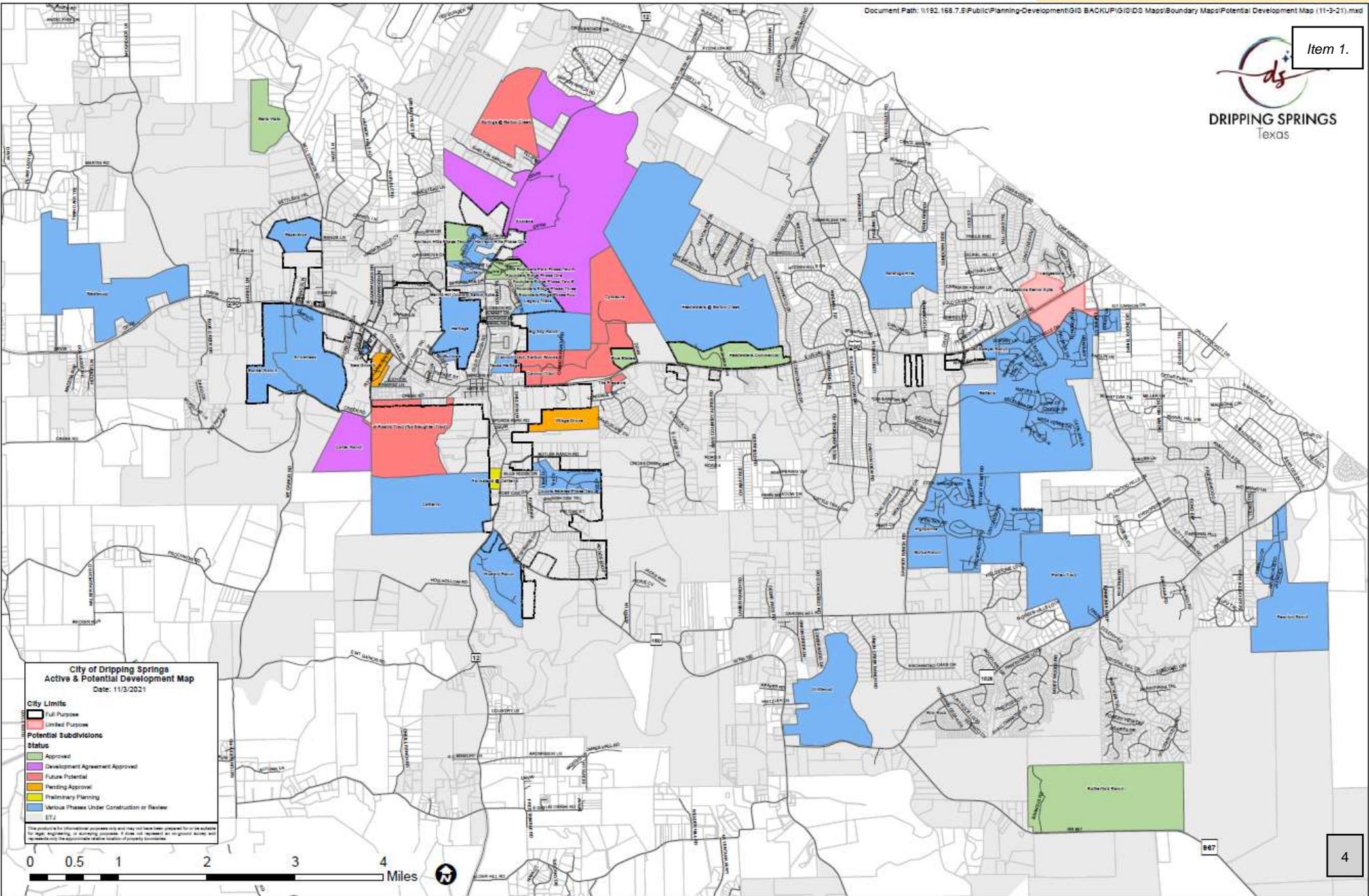
This facility is wheelchair accessible. Accessible parking spaces are available. Requests for auxiliary aids and services must be made 48 hours prior to this meeting by calling (512) 858-4725.



DRIPPING SPRINGS
Texas

Temporary Development Moratorium

Laura Mueller, City Attorney



**City of Dripping Springs
Active & Potential Development Map
Date: 11/3/2021**

City Limits

- Full Purpose
- Limited Purpose

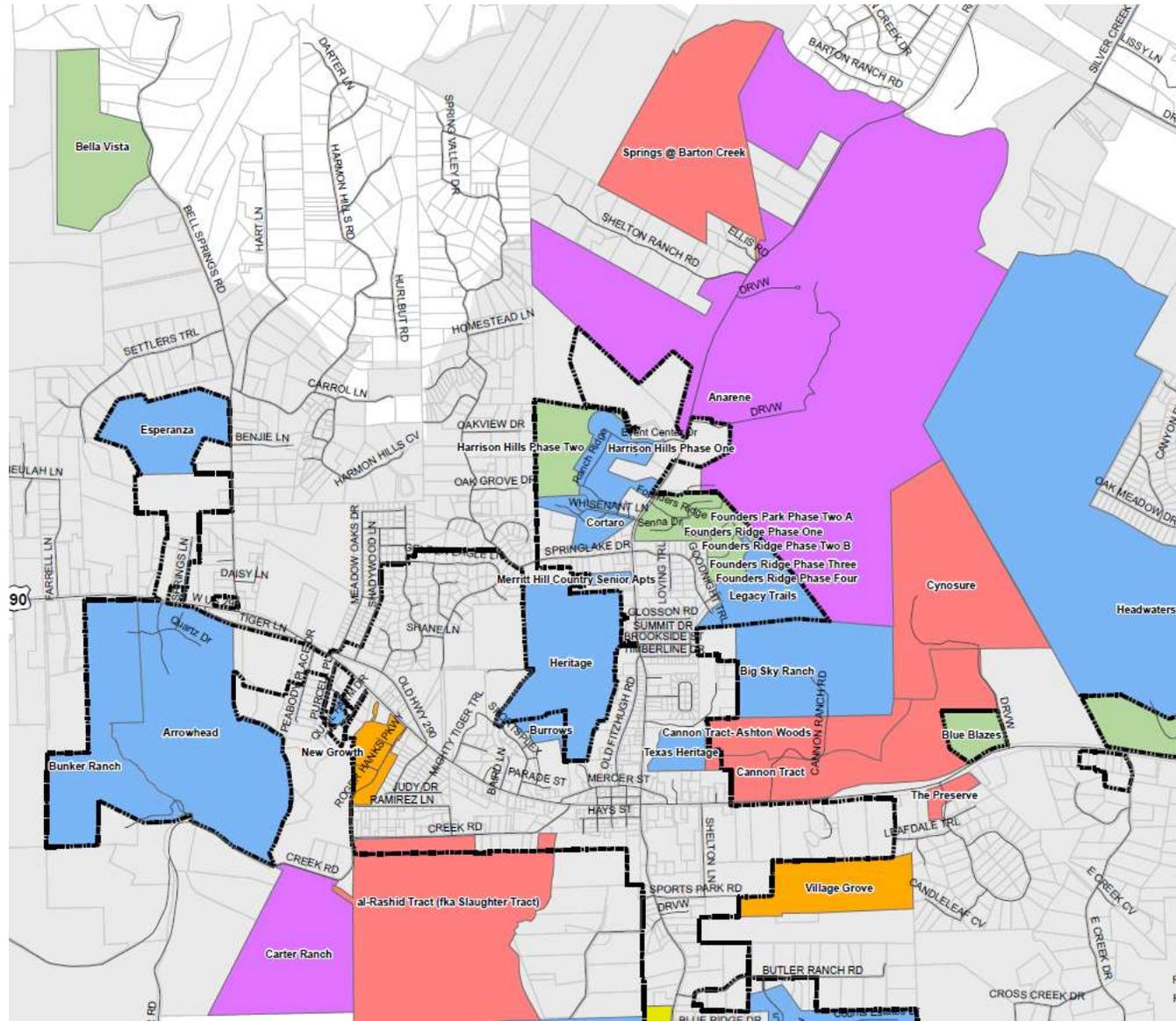
Potential Subdivisions

Status

- Approved
- Development Agreement Approved
- Future Potential
- Pending Approval
- Preliminary Planning
- Various Phases Under Construction or Review

This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or planning purposes. It does not represent an original survey and does not show the approximate relative location of property boundaries.





Highlights:



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- Would delay new development based on need to update land use regulations and examination of wastewater availability
 - Land use regulation deficiencies related to health and safety
 - Needed public infrastructure
- Requires two public hearings and ordinance
 - P&Z Hearing – November 15, 2021
 - 2 City Council meetings (public hearing and 2 readings)
 - November 16, 2021
 - November 22, 2021
 - Newspaper Notice issued on November 11, 2021
 - Temporary Moratorium begins November 18, 2021 (5 business days after the notice is published)



Effect of Temporary Development Moratorium

- No applications will be accepted by the Building and Planning Departments without a waiver
- Waivers or exceptions can be granted for ongoing, vested, or small, no impact projects. Waivers may also be granted by the city council for projects that are recognized to not detrimentally affect the City.
 - For Example:
 - Projects within Approved Development Agreements would continue
 - Projects that do not require wastewater or a land use change would continue
 - Projects where wastewater has been approved by agreement and no land use change is requested
 - Projects that have received a Grandfather Status Determination Letter stating their vesting rights due to previous approvals
- New Development Projects that do not fall within the waiver requirements will be delayed until the moratorium is over.
- If moratorium is extended, administratively approved exceptions will be available in lieu of waivers.

Proposed Moratorium Ordinance



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- Applies to City Limits and ETJ
- Allows for administrative exceptions process with appeal to City Council
 - Exceptions will be allowed to be requested at time of application **or** within 30 days of enactment of the ordinance without separate application
- Enacts waiver process as required by Chapter 212 of the Texas Local Government Code with review by the City Council
 - Waiver requests will be allowed at the time of application
- Extended for **90 days** based on need for update to Comprehensive Plan and Zoning Code as well as wastewater availability
- Can be extended
- Includes list of affected and unaffected permits



Proposed Moratorium Ordinance



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EXCEPTIONS

- Vested/Ongoing Projects under Chapter 245 of the Texas Local Government Code
- Platted Projects where wastewater approved
- Development Agreement projects where there is a “right to continue development”
- Wastewater Agreements would follow their interim solutions
- Other exceptions such as projects with no impact or other types of small projects could also be excepted
- Exceptions are administratively approved (10 business days the same as administratively completeness check) – provides for appeals to City Council

WAIVERS

- Projects can apply for waivers simultaneously with their applications
- Waivers are reviewed and approved by City Council
- City Council has 10 days after submission of waiver request to decide whether or not to approve waiver
- Waivers may be granted by the city council for projects that are prohibited by the moratorium, but are recognized to not detrimentally affect the city

Both of these would be applied for at time of application for the main permit. They could be applied for by lot, project, DA, or PDD.

PERMITS – AFFECTED AND UNAFFECTED

Permits Subject to Moratorium

- Commercial/Multi-Family Building Permit Application
- Residential Building Permit Application
- Subdivision Application
- Site Development Application
- Zoning Amendment/PDD Application
- Development Agreement
- Conditional Use Permit
- Variance Application
- Wastewater Application

Permits not Subject to Moratorium

- Contractor Registration Form
- Grandfathered Status Request/Appeal
- City Limits/ETJ Determination Letter
- Street Cut/Driveway Permit
- On Site Sewage Facility Permit Application
- Mobile Food Unit
- Pre-Development Meeting Form
- Certificate of Appropriateness
- Annexation Application
- Sign Permit
- Zoning Determination Letter Request
- Residential Swimming Pool Permit
- Demolition Permit



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Full list available at
www.cityofdrippingsprings.com/moratorium



Procedures for Adopting a Moratorium and Proposed Schedule



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- November 11th** - newspaper notice published
- November 15th** – Planning and Zoning Commission public hearing
- November 16th** – City Council first public hearing and first reading
- November 18th** - temporary moratorium begins
- November 22nd** – City Council meeting where approval or disapproval of extending moratorium occurs

If approved, ongoing Council Meetings to approve any waivers. (City Council only has 10 days to approve each waiver request).





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QUESTIONS?



CITY OF DRIPPING SPRINGS

ORDINANCE 2021-

AN ORDINANCE OF THE CITY OF DRIPPING SPRINGS, TEXAS, (“CITY”) ENACTING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, AUTHORIZATION, AND APPROVALS NECESSARY FOR THE SUBDIVISION, SITE PLANNING, DEVELOPMENT, AND CONSTRUCTION IN THE 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 Council of the City of Dripping Springs (“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 it is in the best interest of the City and its citizens to adopt and enact a moratorium in order to temporarily suspend the acceptance, authorization, and approvals necessary for the subdivision, site planning, development, zoning, and construction on real property in the City limits and extraterritorial jurisdiction; and

WHEREAS, the City has developed a Comprehensive Plan for development within the City and desires to protect its ability to regulate development within its jurisdiction; and

WHEREAS, the City has started the process of revisiting the Comprehensive Plan and studying land use and development in the City limits and extraterritorial jurisdiction, and has issued a Request for Qualifications for a professional land planning firm to provide comprehensive plan and development code services; and

WHEREAS, Texas Local Government Code Section 51.001 provides the City general authority to adopt an Ordinance or police regulations that is 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; and

WHEREAS, the City Limits and Extraterritorial Jurisdiction (ETJ) are comprised of a combination of topographical, ecological, and drainage features that create significant development challenges; and

WHEREAS, the City will change drastically if continued growth and development should occur under the City's existing Code of Ordinances and Comprehensive Plan, which no longer adequately address concerns about the effect of responsible development in the City and ETJ; and

WHEREAS, as codified in Tex. Water Code § 26.081(a), the Legislature of the State of Texas found and declared that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state; and

WHEREAS, the City agrees with the Legislature of the State of Texas that it is necessary to the health, safety, and welfare of the people in the City limits and the ETJ to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens in the City limits and the ETJ to prevent pollution and maintain and enhance the quality of the water in the City limits and the Extraterritorial Jurisdiction; and

WHEREAS, the City conducted an analysis to determine the adequacy of the City's current regional wastewater facilities and the need beyond the estimated capacity that is expected to result from new property development; and

WHEREAS, upon review of the analysis by the City's Wastewater Engineer and Deputy City Administrator, the City Council has made findings contained herein related to the inadequacy of existing essential public facilities in accordance with Section 212.135 of the Texas Local Government Code; and

WHEREAS, the City Council finds that certain essential public and private infrastructure, being wastewater facilities and improvements and transportation facilities and improvements throughout the City Limits and ETJ, are inadequate and insufficient to adequately serve new development; and

WHEREAS, relying on the analysis provided by City Staff, the outstanding permits issued by the City prior to this moratorium, and the City's impact fee analysis, the City Council makes the following findings:

1. Taking into account all wastewater that has been committed by contract, the City’s wastewater facilities are at capacity; and
2. The current wastewater collection system has bottlenecks that threaten the proper operation of the City’s regional wastewater system;
3. Based on these bottlenecks and the contractual commitments that will utilize all additional capacity of the City’s regional wastewater plant, there is currently no additional capacity available to commit to development of lots; and
4. This moratorium is reasonably limited to property located in the City limits and the ETJ.

WHEREAS, until actions can be taken to increase the wastewater capacity of the City of Dripping Springs, allowing for additional wastewater service connections to the Dripping Springs Wastewater Treatment Plant(s) service area will only exacerbate the situation; and

WHEREAS, the City Council finds that a temporary moratorium on the acceptance, authorization, and approvals necessary for the subdivision, site planning, development, and construction in the City Limits and ETJ will prevent the situation from becoming worse, and will allow the City time to address the measures needed to remedy the shortage of capacity and to secure funds to pay for such remedial measures; and

WHEREAS, additional evaluation of the existing infrastructure and development 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, the City desires to study and evaluate the impact of further development; the need for additional wastewater facilities; appropriate zoning districts and district regulations; appropriate land use and wastewater regulations; and issues that will affect future growth and development of the area within its jurisdiction; and

WHEREAS, the City finds this evaluation process will require community input and will take a reasonable amount of time to complete; and

WHEREAS, the City has determined that it is necessary to study and update its development ordinances and procedures in order to clarify and improve its planning policies based on the forthcoming regulations, strengthen the connection between the City’s Code of Ordinances and the goals and needs of the City’s residents, and to protect the health, safety, environment, quality of life, and general welfare of its residents; and

WHEREAS, in order for the City to have adequate and reasonable time to review, evaluate, and revise the City’s development ordinances, and to consider the impact of the ordinances upon future growth, public health and safety, development, the natural environment, and place of architectural, and ecological importance and significance

within the City Limits and ETJ, the City wishes to maintain the *status quo* by implementing a temporary moratorium, during which certain applications for development permits and/or approvals will be suspended; and

WHEREAS, the purpose of prohibiting certain applications for development permits and/or approvals during this study period includes, within limitation, preserving the *status quo* during the planning process, eliminating incentives for hurried applications, facilitating thoughtful and consistent planning, avoiding exploitation of the delays inherent in the municipal legislative process, and preventing applications from undermining the effectiveness of the revised rules by applying for permits and/or approvals in order to avoid the application of new, possibly more restrictive, development regulations; and

WHEREAS, in recognition of the importance of development permits and/or approvals to the community, the City desires to implement this moratorium for a stated and fixed time period, and to include a waiver provision in accordance with Local Government Code Chapter 212, Subchapter E; and

WHEREAS, all notices and hearings, including a hearing by the Planning & Zoning Commission, have been published and held in accordance with applicable statutes, laws, and regulations; and

WHEREAS, based on the findings contained herein, information provided by City staff, and the evidence submitted at public hearings, the City Council has determined that existing development ordinances and regulations and other applicable laws are inadequate to prevent existing essential public facilities from exceeding capacity, thereby being detrimental to the public health, safety, and welfare of the residents of Dripping Springs; and

WHEREAS, the City Council finds that the enactment of this Ordinance is directly related to the immediate preservation of the public peace, health or safety.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DRIPPING SPRINGS, TEXAS THAT:

SECTION 1. FINDINGS OF FACT: The foregoing recitals are 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.

A. 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.

B. Essential public facilities: means water, sewer, or storm drainage facilities or street improvements provided by a municipality or private utility.

C. 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.

D. 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.

E. 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.

F. Residential property: means property zoned for or otherwise authorized for single-family or multi-family use.

SECTION 3. APPLICABILITY: The City of Dripping Springs hereby enacts this Ordinance in order to implement a temporary moratorium on the acceptance and processing of certain applications and issuance of particular permits and other forms of municipal authorizations related to specific construction and land development activities. This temporary moratorium applies to all city zoning district uses within the City Limits and the ETJ.

Unless a project falls within an Exception (as provided below), this temporary moratorium applies to all applications for property development permits. Permits that are affected or not affected by the Moratorium are attached as **Attachment “A”**.

SECTION 4. PURPOSE: This temporary moratorium is being enacted to maintain the *status quo*, and to:

- A. assess the short-term and long-term comprehensive plan;
- B. review the City’s policies on the acceptance of applications for municipal permits for construction or development;
- C. update the City’s permitting and planning requirements and processes for wastewater and transportation infrastructure; and
- D. obtain and review public input and expert guidance.

SECTION 5. ENACTMENT: The City of Dripping Springs hereby enacts this Ordinance implementing a temporary moratorium on the City’s acceptance, review, approval, and issuance of permits in the City Limits and ETJ.

SECTION 6. DURATION: The initial duration of this temporary moratorium shall be for a period of ninety (90) days after enactment of this Ordinance, or repeal of this Ordinance by the City, whichever is sooner.

SECTION 7. EXTENSION: If the City determines that the initial period is insufficient for the City to fully complete its study and planning, this Ordinance may be renewed or extended for an additional period of time, necessary to complete the study and implement the recommended changes to City codes, policies, and processes 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. Any property owner who believes that they fall within the below exceptions shall provide notice of the exception at time of application for any permit. Exceptions are administratively approved or denied. Any exception that is denied may be appealed to the City Council. Exceptions will be determined within the same time period as the administrative completeness check for each project, or within ten business days, whichever is sooner. If a Grandfathered Development Status Determination Request is required, then the exception can be applied concurrently with the Request but the time frame of the Request shall be controlling.

1. No Impact Projects. The temporary moratorium implemented by this Ordinance does not apply to a project that does not:

- Impact wastewater capacity
- Require land use modifications inconsistent with the updated comprehensive planning

2. Ongoing Projects.

The temporary moratorium implemented by this Ordinance does not apply to any projects that are currently, actively in progress for which valid City permits have been issued and have not expired as of November 18, 2021, such being the fifth business day after the date on which the City published notice of the public hearings to consider this Ordinance. The provisions of this Ordinance do not apply to any completed application or plan for development for a permit, plat, verification, rezoning, site plan, approved wastewater plan, or new or revised certificate of occupancy for Property Development that were filed prior to November 18, 2021.

3. Grandfathered Projects. The temporary moratorium implemented by this Ordinance shall not apply to projects that are grandfathered under 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 temporary moratorium to the planning department for review in accordance with City policy. Grandfathered status can be approved through an approved Grandfathered Development Status Determination Request. If a Grandfathered Development Status Determination Request has been finalized by

staff on or after November 18, 2019, then a new request is not required to meet this exception.

- 4. Development Agreement:** Property owners with a negotiated approval granted by the City Council providing for construction standards, platting, wastewater, and development rules pursuant to Local Government Code Chapter 212, Subchapter G may apply for an exception in accordance with City policy.
- B. Waivers.** 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 temporary moratorium can request a waiver. Property owners agreeing to construct certain wastewater infrastructure at property owners' sole expense and who do not require land use modifications inconsistent with the updated comprehensive planning, in accordance with Local Government Code Chapter 212, Subchapter E may apply for waiver in accordance with City policy.

SECTION 9. DETERMINATIONS & APPEALS

- A. Exceptions.** The Planning Director or their designee shall make all initial determinations regarding the status of all projects seeking to apply for permits during this temporary moratorium and recognition of all Exceptions (as provided herein). Exceptions for projects filed within thirty (30) days of the effective date of this ordinance may be filed without a corresponding permit application. Any exception application filed within this period will be decided within ten (10) business days of receipt.
- B. City Council.** City Council shall make a final decision on waivers within 10 days of filing of application.
- C. Waivers.** 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 temporary 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.

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 public hearings were also provided as required by Texas Government Code Chapter 212, Subchapter E.

READ & ACKNOWLEDGED on First Reading on the 10th day of November 2021.

READ & APPROVED on the Second Reading on the 16th day of November 2021.

CITY OF DRIPPING SPRINGS:

by: _____
Bill Foulds, Jr., Mayor

ATTEST:

Andrea Cunningham, City Secretary

ATTACHMENT “A”



Permits Subject to Moratorium

- Commercial/Multi-Family Building Permit Application
- Residential Building Permit Application
- Plan Review Application
- Subdivision Application
- Site Development Application
- Zoning Amendment/PDD Application
- Development Agreement
- Development Agreement Minor Modification/Amendment
- Conditional Use Permit
- Variance Application
- Wastewater Application
- Special District Agreement/Amendment

Permits not Subject to Moratorium

- Contractor Registration Form
- Grandfathered Status Request/Appeal
- City Limits/ETJ Determination Letter
- Street Cut/Driveway Permit
- Operational Permit/Inspection Application
- On Site Sewage Facility Permit Application
- Child Care Facility Health Inspection Application
- Food Establishment Permit/Compliance Inspection
- Mobile Food Unit
- Pre-Development Meeting Form
- Certificate of Appropriateness
- Annexation Application
- Sign Permit
- Master Sign Plan
- License to Encroach
- Zoning Determination Letter Request
- Residential Demolition Permit
- Residential Swimming Pool Permit
- Commercial Demolition Permit
- Asbestos Compliance Statement
- Pyrotechnics/Fireworks Application
 - Certificates of Occupancy Application (Business Move In/Change of Ownership)