Village of Volente

Temporary Moratorium

ORDINANCE NO. 2004-O-23

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS, ESTABLISHING A TEMPORARY 60-DAY MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF SUBDIVISION PLATS, SITE DEVELOPMENT PLANS, BUILDING PERMITS AND ZONING APPLICATIONS FOR LAND WITHIN THE VILLAGE OF VOLENTE, AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; PURPOSE; COMPLIANCE REQUIREMENT; DURATION; SCOPE OF JURISDICTION; APPLICABILITY; VARIANCE CONSIDERATION; TEMPORARY SUSPENSION; ENFORCEMENT, INCLUDING CRIMINAL FINES AND CIVIL PENALTIES; CONFLICTING PROVISION; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Village of Volente ("Volente") is a newly-created governmental entity that was incorporated pursuant to the laws of the State of Texas as a Type B General-Law Municipality following an election held on February 1, 2003; and

WHEREAS, pursuant to the laws of the State of Texas, the Mayor and Village Council were duly elected following an election held May 3, 2003; and

WHEREAS, the City Council of Volente ("Council") has actively been studying and evaluating the impact of development; document development at the time of incorporation; and consider regulations that seek to provide for the orderly and safe development of land and use of property within its Village limits (i.e. incorporated municipal boundary) 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 Council seeks to preserve the health, safety and general welfare of the community by enacting comprehensive development, subdivision and zoning regulations that provide for orderly growth, insure that the impact of development has an acceptable impact on the distinctive character of the community and preserve the cultural and aesthetic character of the Village; and

WHEREAS, the Council seeks to promote a positive Village image reflecting order, harmony and pride, thereby strengthening the economic stability of the Village's commercial, cultural, environmental, historical, residential and scenic areas; and

WHEREAS, the Council has the general authority to regulate land use and development and nuisances pursuant to the Texas Constitution, the Village's police power and by the Texas Local Government Code; and

WHEREAS, the Council has obtained consultants to diligently work with the Council in researching and preparing to adopt comprehensive subdivision, zoning, water quality and building codes; and

WHEREAS, the Council has provided ample public notice and opportunities for citizen input on this Ordinance; and

WHEREAS, the Council finds that a temporary moratorium is necessary and prudent so that the Council may study and adopt appropriate administrative and regulatory rules and procedures; and

WHEREAS, the Council recognizes the importance of development permits and/or approvals to the community, the City Council desires to implement this moratorium for a stated and fixed time period, and to include a variance provision for cases of necessity and undue hardship.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS:

1. ENACTMENT CLAUSES

A. **Findings of Fact.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of Volente, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

B. **Purpose.** This temporary moratorium prohibiting applications for subdivision, zoning, building permits or development permits is adopted so that the City Council may promote the public health, safety and general welfare within the Village 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* in order to allow the City Council 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 City Council enacts the appropriate administrative and regulatory rules and procedures.

C. **Compliance Requirement.** Except as provided in Section 3 of this Ordinance, no applications for subdivision plats, site development plans, building permits or zoning applications will be accepted for filing or processed and no such permits or approvals will be issued by the Village until either: (1) 60 days after enactment of this Ordinance, or (2) repeal of this Ordinance by the City Council, whichever is sooner.

D. Duration. This Ordinance is enacted for a limited duration and shall be in effect for an initial term of 60 days from the effective date, or until expressly repealed by the City Council. If the City Council determines that this 60-day period is insufficient for the Village to fully complete its study of and planning for the area within the Village, this Ordinance may be extended as reasonable and necessary upon a majority vote of the City Council.

E. Scope of Jurisdiction. The provisions of this Ordinance shall apply within the incorporated municipal boundary (i.e., city limits) of the Village of Volente.

F. Applicability. This Ordinance applies to property currently used for, or reasonably intended to be used for, commercial, industrial, manufacturing, multi-lot single family residential developments, and/or multi-family residential purposes.

G. Exemptions. This Ordinance shall <u>not</u> apply to the following:

(1) legally permitted properties upon which construction actively commenced prior to May 20, 2003; or
(2) properties that have received a site development permit from Travis County, Texas, prior to May 20, 2003; or
(3) construction on individual, single-family residential properties on a legally platted lot in existence on or prior to May 20, 2003; or
(4) Ordinary maintenance.

Properties to which this Ordinance does not apply shall comply with the development rules and regulations applicable to development in the unincorporated portions of Travis County, Texas, and the City Council, or its designee, shall refer to said rules and regulations in determining the compliance and legality of the development of properties exempted from the application of this Ordinance, until such time as the City Council enacts different development rules and regulations.

H. Definitions.

(1) Build means 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.
(2) Clear means 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.
(3) Fill means to deposit or stockpile dirt, stone, construction debris or other material in order to modify land or alter current drainage patterns.
(4) Ordinary Maintenance means 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.

(5) **Person** means any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

2. CONSTRUCTION PERMITS

A. Permits Required. No person shall build, clear, or fill a non-residential lot or structure without applying for and receiving a permit from the Village.

B. Temporary Suspension. The Village's acceptance, review and approval of all subdivision plats, site development applications, building permits or zoning applications within the Village of Volente municipal boundaries is hereby temporarily suspended and prohibited. No applications for subdivision plats, site development plans, building permits or zoning applications will be accepted for filing or processed, and no such permits or approvals will be issued by the Village.

C. Compliance Required. No person shall build, clear, or fill in a manner inconsistent with this Ordinance.

3. VARIANCES

A. Requirements. An owner of property within the Village may request a variance from the requirements of this Ordinance if one ore 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.
(2) The owner can demonstrate a vested legal right to proceed under regulations that predated incorporation of the Village.
(3) The proposed construction is necessitated by concerns for public safety and will serve to protect the public health, safety and welfare. Specifically, the variance 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 a commercial or retail structure that lawfully existed prior to May 20, 2003, and satisfies the following conditions:
   (a) The structure contains a business that was lawfully in operation on or before May 20, 2003;
   (b) The construction will not expand the structural footprint as it existed on or before May 20, 2003; and
   (c) The construction will not change the use of the structure.

B. Process for Application.

(1) Applicants for a variance must submit a completed form with attachments to the Mayor or City Clerk. The application, accompanying documentation, and administrative fees must be rendered to the Village at least 2 weeks prior to the public hearing.

(2) The Village must provide written notice to all property owners within 500 feet of the footprint of the structure for which a variance is sought. The notice shall contain a description of the variance and the time, date, and place of the public hearing on the application. Notice must be provided at least 10 days prior to the hearing.

(3) Applications for a variance shall be reviewed by the City Engineer, City Attorney and Mayor prior to submission to the City Council for consideration.

(4) A variance may be granted by the City Council after a public hearing and upon issuance of written findings that special circumstances or conditions affecting the property in question justify the variance, and that the granting of the variance will not have an adverse effect neighboring properties, or hinder the accomplishment of the goals of the moratorium established by this Ordinance.

(5) An applicant for a variance may voluntarily request that the application be postponed or withdrawn prior to final action by the City Council. 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. Requirements for Variances.

(1) Construction plans submitted to the Village must bear the signature and seal of a licensed professional engineer or architect.

(2) Construction performed pursuant to a variance issued under this Ordinance shall be performed in accordance with all building codes adopted by the Village and the federal Americans with Disabilities Act (ADA).

(3) Construction performed pursuant to a variance issued under this Ordinance must be completed within 30 days of issuance of the variance. Upon request, the Mayor is authorized to grant an additional 30-day extension. Additional extensions must be approved by the City Council.

4. ENFORCEMENT

A. **Civil and Criminal Penalties.** The Village 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 as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

B. **Criminal Prosecution.** Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars ($500.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

C. **Civil Remedies.** Nothing in this Ordinance shall be construed as a waiver of the Village'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 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 one thousand dollars ($200.00) 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.

5. CONFLICTING PROVISIONS

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

6. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or set of circumstances is held to be unconstitutional, invalid, or unenforceable, the validity of the remaining portions of this Ordinance shall not be affected thereby, this being the intent of the City Council in adopting this Ordinance and all provisions of this Ordinance are declared severable for that purpose.

7. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its approval by the City Council.

PASSED AND APPROVED this, the 20th day of July 2004, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the Village of Volente, Texas.

Village of Volente

Jan Yenawine, Mayor

Attest:

Jennifer Zufelt, City Secretary