VILLAGE OF VOLENTE

ORDINANCE NO. 2004-O-26
EXTENSION OF MORATORIUM

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS, EXTENDING FOR 90 DAYS THE EXPIRATION DATE FOR THE TEMPORARY MORATORIUM INITIALLY ENACTED UNDER ORDINANCE 2003-O-01, RELATING TO THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR SUBDIVISION PLATS, SITE DEVELOPMENT PLANS, BUILDING PERMITS AND ZONING OF LAND WITHIN THE VILLAGE OF VOLENTE; PROVIDING FOR THE APPLICATION AND GRANTING OF WAIVERS FROM THE MORATORIUM; PROVIDING FOR ENFORCEMENT OF THE MORATORIUM; PROVIDING FOR CONFLICTS WITH OTHER ORDINANCES, PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, the Village of Volente ("Volente") 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, the City Council of Volente ("City Council" or "Council") enacted Ordinance 2003-O-01 on May 20, 2003, which established a temporary moratorium on the filing and processing of applications for subdivision plats, site development plans, building permits and zoning applications; and

WHEREAS, the Council excepted from the moratorium those properties upon which construction had commenced prior to May 20, 2003; those properties that had received a site development permit from Travis County, Texas, prior to May 20, 2003; and, single-family residential structures and other improvements to be constructed on lots legally platted prior to May 20, 2003; and

WHEREAS, the Council has subsequently extended the moratorium from time to time in order to develop a Comprehensive Plan for Volente prior to enacting ordinances governing the existing and future development of Volente; and

WHEREAS, it has taken a substantial period of time to solicit, receive, evaluate and incorporate into a Comprehensive Plan for Volente the responses to a community survey which requested the citizens of Volente to provide the

Council with their opinions, desires and needs in connection with the future growth of Volente; and,

WHEREAS, the Comprehensive Plan will shortly be completed and presented to the Planning and Zoning Commission for recommendation to Council and to the Council for adoption; and

WHEREAS, various citizen committees have been working on ordinances to provide the rules and regulations to achieve the goals set forth in the Comprehensive Plan; and

WHEREAS, many of those ordinances are already in draft form and the Council has scheduled public hearings on those ordinances during the months of August and September of 2004; and

WHEREAS, the Council has concluded that it is necessary to extend the moratorium for an additional ninety days from August 8, 2004, in order to ensure that the appropriate zoning, subdivision, watershed and permitting ordinances have been adopted prior to making decisions on the future growth of Volente, to preserve the health, safety and general welfare of the citizens of Volente as well as to provide for the orderly growth of Volente consistent with the distinctive cultural and aesthetic character of Volente; and

WHEREAS, various citizens have complained about the length of time the moratorium has been in effect and have alleged that the moratorium is interfering with the development of their property and that they are sustaining economic damages resulting from the moratorium; and

WHEREAS, the Council desires to provide a procedure whereby the Council can waive the moratorium upon a showing by a Landowner that the moratorium does not substantially advance the legitimate interests of Volente, or denies a Landowner all economically viable use of its property, or unreasonably interferes with a Landowner's right to use and enjoy its property considering the economic impact of the moratorium on the Landowner and the extent to which the moratorium interferes with the Landowner's distinct investment-backed expectations.

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

SECTION 1. Enactment Clauses

(A) Findings. The City Council finds that all of the factual statements stated in the "whereas" clauses above are true and correct and are incorporated into the body of this Ordinance as the legislative and factual findings in support of the extension of the moratorium provided for in this Ordinance.

(B) Purpose. The City Council concludes that it is necessary to extend the moratorium for an additional ninety days from August 8, 2004, in order to ensure that the appropriate zoning, subdivision, watershed and permitting ordinances have been adopted prior to making decisions on the future growth of Volente, to preserve the health, safety and general welfare of the citizens of Volente as well as to provide for the orderly growth of Volente consistent with the distinctive cultural and aesthetic character of Volente.

(C) Moratorium on accepting certain applications. Except as provided by Section 2 of this Ordinance, no applications for subdivision plats, site development plans, watershed permits, building permits or zoning applications will be accepted for filing or processed by Volente and no such permits or approvals will be issued by Volente during the term of this moratorium.

(D) Duration. The moratorium under this Ordinance is effective for a maximum of ninety days and unless sooner terminated by action of the City Council, terminates without any further action by the City Council on the 91st day after the effective date.

(E) Applicability. This moratorium applies to all property in the Village of Volente except for properties to which the following apply:

(1) Properties upon which construction had commenced prior to May 20, 2003;

(2) Properties that had received a site development permit from Travis County, Texas, prior to May 20, 2003; and,

(3) Properties on which single-family residential structures and other improvements associated with single-family residential structures are to be constructed, provided the lot was either legally platted prior to May 20, 2003, or has the same metes and bounds description it had prior to May 20, 2003.

SECTION 2. Waivers

(A) Procedure. An owner within Volente ("Landowner") may request a Waiver ("Request for Waiver") from the moratorium provided for in this Ordinance. Requests for Waiver shall be in writing, shall be addressed to the Council, shall identify the Landowner, shall identify the property subject to the Request for Waiver, shall specify what the Landowner desires to do on or with the property, and shall provide the reasons for the Request for Waiver. All documentary evidence in support of the Request for Waiver shall be filed with the request.

(B) Administrative Completeness. The City Council shall first determine if the Request for Waiver is administratively complete. If the Request for Waiver is not administratively complete, the City Council shall notify the Landowner in writing within

10 working days after the Request for Waiver is filed listing the deficiencies and giving the Landowner a deadline for curing those deficiencies.

(C) Public Hearing. Once the Request for Waiver is administratively complete, the City Council shall schedule and hold a public hearing on the Request for Waiver on a date not later than 15 working days after the date of the determination that the Request for Waiver is administratively complete.

(D). Evidentiary basis for granting a Waiver. The City Council must find that the Landowner has proven one of the following before the City Council can grant a Waiver from the moratorium:

(1) Applying the moratorium to the Landowner does not substantially advance the legitimate interests of Volente;

(2) Applying the moratorium to the Landowner destroys all economically viable uses of its property; or

(3) Applying the moratorium to the Landowner unreasonably interferes with its right to use and enjoy its property

(a) considering the economic impact of the moratorium on the Landowner, or

(b) considering the extent to which the moratorium interferes with the Landowner's distinct investment-backed expectations.

(E) Action on Request for Waiver. The City Council shall vote on whether to grant the Request for Waiver no later than 15 days after the public hearing is held.

SECTION 3. The extension of Variance Procedures contained in the original moratorium and moratorium extensions.

(A) Requirements. In the original Moratorium and the various extensions, a variance procedure from the moratorium was permitted. In order to provide for the continuation and ratification of variances already granted or currently being processed, the prior Variance procedure is being extended, provided an owner of property within the Village could demonstrate that one or more of the following conditions existed.

(1) There are special circumstances or conditions that imposed an undue hardship on the property owner because of a unique situation.

(2) There was a vested legal right to proceed under regulations that predated incorporation of the Village

(3) The proposed construction is necessary to correct one or more of the following public safety problems:

(a) vehicular traffic safety;

(b) pedestrian traffic safety;

(c) delivery of fire prevention and protection services;

(d) delivery of emergency medical services;

(e) flood damage prevention and protection;

(f) water quality pollution prevention; or

(g) disease prevention.

(4) The Proposed construction is for a commercial or retail structure that lawfully existed prior to May 20, 2003, and which 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

(c) The construction will not change the use of the structure.

(B) Procedure to Process the 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 filed with to the Village Secretary at least 2 weeks prior to the public hearing.

(2) The Village must provide written notice to all propery owners within 500 feet from 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 submission 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 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.

SECTION 4. Enforcement

(A) Penalties. Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding $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.

(B) Civil Remedies. Volente may bring a civil action in a Travis County district court to enforce the provisions of this Ordinance. In such an action, Volente may request the court to grant the following relief:

(1) Injunctive relief to prevent specific conduct that violates the provisions of this Ordinance or to require specific conduct necessary for compliance with the provisions of this Ordinance;

(2) A civil penalty up to $1,000.00 if it is shown that after receiving specific notice of the provisions of the Ordinance and specific notice that its actions were a violation of the Ordinance, the person either continued to commit

(1) Injunctive relief to prevent specific conduct that violates the provisions of this Ordinance or to require specific conduct necessary for compliance with the provisions of this Ordinance;

(2) A civil penalty up to $1,000.00 if it is shown that after receiving specific notice of the provisions of the Ordinance and specific notice that its actions were a violation of the Ordinance, the person either continued to commit violations of the provisions of the Ordinance or failed to take any action necessary to comply with the provisions of the Ordinance. Each day that a provision of this Ordinance is violated shall constitute a separate offense.

Section 4. Conflicting Provisions.

In the event there is a conflict between the provisions of this Ordinance and any other currently effective ordinance of Volente, the provisions of this Ordinance will control.

Section 5. Severability.

If any portion of this Ordinance or the application of this Ordinance to any person or set of circumstances is held to be invalid or unenforceable for any reason, then that holding shall not be construed to affect the validity of any other portion of this Ordinance, and all other portions shall remain in full force and effect. All provisions of this Ordinance are declared severable for that purpose.

Section 6. Effective Date.

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

PASSED AND APPROVED this, the 3rd day of August 2004, by a vote of the Volente City Council of 3 in favor to _0 opposed with _0 abstentions.

Jan Yenawine, Mayor

Attest:

Jennifer L. Zufelt