

CITY OF CREEDMOOR, TEXAS
ORDINANCE NO. 221020-A

AN ORDINANCE EXTENDING THE ESTABLISHED MORATORIUM ON RESIDENTIAL DEVELOPMENT WITHIN THE JURSDICTION OF THE CITY OF CREEDMOOR, TEXAS THROUGH FEBRUARY 20, 2023 TO ALLOW THE CITY TO DETERMINE REQUIRED DEVELOPMENT PROCEDURES TO PROMOTE THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE IN THE CITY OF CREEDMOOR, TEXAS.

BE IT HEREBY ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CREEDMOOR, TEXAS :

ARTICLE I.

SECTION 1.01: PURPOSE AND FINDINGS: It is the purpose of this ordinance to provide the City with sufficient time to determine criteria for future development within the jurisdiction of the City including, but not limited to determining how future developments will be:

1. Served with water and wastewater service ;
2. Served with police , fire, and emergency medical services;
3. Provide street infrastructure and the impact of that element on the existing and future City infrastructure , and continuing maintenance;
4. Impact on the health, safety and general welfare and future development of the City.

It is determined by the City Board of Aldermen, upon notices posted and public hearing required by statute, that in order to meet the above stated goals re development within the City that the existing moratorium established on JUNE 16, 2022 shall hereby be extended for an additional 120 days.

SECTION 1.02: IT IS HEREBY ORDERED BY THE BOARD OF ALDERMEN OF THE CITY OF CREEDMOOR, TEXAS:

1. The staff of the City shall not accept or process any application for permits for the construction of any residential development within the jurisdiction of the City from the date of this ordinance through FEBRUARY 20, 2023.

2. The City staff shall provide a copy of this ordinance as additional notification to any applicant that during the moratorium no effort to further develop the included property will be available.

Ordinance 221020-A

THIS ORDINANCE HAS BEEN PASSED AND APPROVED BY A MAJORITY OF THE BOARD OF ALDERMEN OF THE CITY OF CREEDMOOR, TEXAS ON THE 20th DAY OF OCTOBER, 2022

CONFIRMED BY:


FRAN KLESTINEC, MAYOR

ATTESTED BY:

ROBERT WILHITE, CITY ADMINISTRATOR

APPROVED AS TO FORM:

DONALD E. BIRD, CITY ATTORNEY

LAW OFFICE OF DONALD E. BIRD

OCTOBER 17, 2022

MEMO : RE PROPOSED DEVELOPMENT AGREEMENT WITH MRLH, LLC

TO: MAYOR and BOARD OF ALDERMEN OF CITY OF CREEDMOOR:

DEAR MAYOR AND MEMBERS:

BACKGROUND:

It may be useful to recall that the purpose of development agreements was to provide mechanism for a property owner and the city in whose ETJ the owner's property is located to agree on elements of development which would provide guidance to the owner for the development of the property which would be acceptable to the owner and ensure that the development which would eventually be annexed into the city is developed in a manner acceptable to the city. This provided a mechanism for the city to apply much of its development regulation to the development in the ETJ including its land use regulations not otherwise applicable to property in the ETJ (such as zoning) and obtain a request for the annexation of the development into the city in exchange for providing the owner comfort in being able to plan it's development with clearly defined elements.

These agreement are not applicable to property within the city primarily because no city can contract away it's policing powers which includes land use determination; primarily it's zoning authority. This prohibition has been clearly established in existing case law in Texas and many other states.

I have had an opportunity to review the initial draft of the development agreement tendered by MRLH, LLC.

This draft agreement has various elements which must be revised before the City can enter into the agreement:

1. The draft presumes that the land use for the property within the city can be established as a condition of the agreement. That would be contractual zoning which has consistently been deemed an illegal contracting away of governmental authority by Courts in this (and other) states. Of course, the parties can agree to development and land use terms for areas within the City's ETJ which would be retained upon future annexation of the property. The areas of the agreement which tend to lump the property in the ETJ of the City and that property within the City must be clarified.

2. In addition the agreement, as written, appears to presume that the agreement approval would supplant future zoning, construction and subdivision requirements related to existing property within the city - again an attempt to contract away the City authority in these areas. The agreement should also acknowledge that the development as applicable to property within the city shall be subject to all other development and construction requirements (including permitting), including fees imposed in conjunction with building or development permits of the City. Basically any applicable change in

the land use (zoning) of the property inside the city must comply with city existing ordinances. It is recommended that the agreement provide for the owner to apply for a Planned Unit Development zoning classification for the property within the City which would reflect uses established in the development agreement for the property in the ETJ (similar to the efforts by the 216 Development}.

3. Any resolution consenting to the creation of a MUD must provide that the consent will be subject to City review and acceptance as appropriate for the City .

4. The Agreement has the City waiving its fees for annexation and zoning which the City can do but should give that consideration.

5. The agreement has the City agreeing to certain tax determination for areas of the property remaining agricultural. The City does not establish tax designations for property and cannot agree to any such determination.

6. The plat approval time period in the agreement should comply with the statutory 45 days rather than the 30 days in the agreement proposed . This can be important to avoid the City being forced into special Board meetings by time constraints.

7. The agreement proposes that Creedmoor's agreement elements must be consistent with the development plans for owner's adjacent property development agreement with Mustang Ridge. The City should be comfortable with the effect of that condition before agreeing to that rather vague obligation.

8. This office did not receive Exhibits Cor D so no comments available for them.

Until these matters are addressed I would recommend that this agreement be tabled for future consideration and action.

Respectfully Submitted

Donald E. Bird
City Attorney

