

Village of Webberville

EXCAVATION MORATORIUM

ORDINANCE NO. 2003- 02

AN ORDINANCE OF THE VILLAGE OF WEBBERVILLE, TEXAS, REQUIRING PERMITS FOR THE EXCAVATION AND CLEARING OF LAND; ESTABLISHING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, REVIEW AND APPROVING OF EXCAVATION PERMITS; AND PROVIDING FOR THE FOLLOWING: POPULAR NAME; FINDINGS OF FACT; A PURPOSE; COMPLIANCE REQUIRED; SCOPE OF JURISDICTION; APPLICABILITY; EFFECTIVE DATE; DURATION; ENFORCEMENT, INCLUDING CRIMINAL FINES NOT TO EXCEED \$500 AND CIVIL PENALTIES NOT TO EXCEED \$1,000 PER VIOLATION; A REPEALER; SEVERABILITY; AND PROPER NOTICE AND MEETING.

WHEREAS the Village of Webberville is a newly-created governmental entity that was incorporated pursuant to the laws of the State of Texas as a Type C 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 Commission were duly elected following an election held February 1, 2003; and

WHEREAS the Village Commission of the Village of Webberville seeks to provide for the orderly and safe development of land and use of property within its Village Limits (i.e., incorporated municipal boundary) and extraterritorial jurisdiction (ETJ); and

WHEREAS the Village Commission finds that the improper excavating of land can cause undue loss of sediment; be harmful to the drinking water supply; detrimental to the cultural and aesthetic character of the Village; impose an unreasonable burden on the community, disturb and devalue adjoining properties; threaten the public health, safety and welfare; and constitute a public nuisance; and

WHEREAS the effects of certain excavations and mining activities can have adverse impacts on the availability of land, water, and other resources for other uses in Webberville and present special problems that properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public; and

WHEREAS the construction, operation and expansion of large excavations and mines pose unique challenges on municipal governments in terms of the construction of new roads or the improvement or use of existing roads; and

WHEREAS the Village Commission seeks a better understanding of such variables as soil structure and composition, physiography, climatic conditions, hydrology, and the needs of the public in order to develop reasonable standards for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources within the Village; and

WHEREAS the Village Commission needs a reasonable amount of time to study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change; and

WHEREAS the Village Commission seeks public input and professional assistance in order to understand the conservation, adaptation, improvement, and restoration of land and related resources affected by mining, so to enact regulations, policies and methods of governmental administration necessary to deal with the special problems posed by large excavations and mines; and

WHEREAS the Village Commission plans to gather and disseminate to the public vital information relating to land use and development with regard to large excavations and mines; and

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

WHEREAS the Village Commission seeks to preserve the health, safety and general welfare of the community by enacting comprehensive land use regulations that provide for orderly growth; and

WHEREAS the Village Commission 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 Local Government Code, Chapters 51, 54, 212 and 217; and

WHEREAS the Village Commission is in the process of diligently researching and preparing to adopt comprehensive subdivision, zoning ordinances, and building codes, and

WHEREAS the Village Commission has provided ample public notice and conducted at least one public hearing at which citizen input was solicited on this Ordinance; and

WHEREAS the Village Commission finds that a temporary moratorium is necessary and prudent in order to protect the *status quo* so that the Village Commission may adopt the appropriate administrative and regulatory rules and procedures.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF WEBBERVILLE, TEXAS:

1. ENACTMENT CLAUSES

A. Popular Name

This Ordinance may be referred to as the Village of Webberville's "Excavation Moratorium."

B. Findings of Fact

All of the above premises are hereby found to be true and correct legislative and factual findings of the Village Commission of Webberville, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

C. Purpose

This Ordinance is adopted so the Village Commission may promote the public health, safety, morals and general welfare within the Village through the regulation of the excavation of land, including the clearing of large lots, mining, and sub-surface construction. The purpose of this Ordinance is to preserve the *status quo* in order to allow the Village reasonable time to conduct research, receive public input, establish reasonable policies, and prepare necessary ordinances. This Ordinance provides temporary regulations while the Village Commission enacts the appropriate administrative and regulatory rules and procedures.

D. Compliance Required

It shall be unlawful for any person to clear, excavate, quarry or mine within the corporate boundaries of the Village in a manner not in compliance with this Ordinance.

E. Scope of Jurisdiction

The provisions of this Ordinance shall apply within the Village Limits (i.e., incorporated municipal boundary) of the Village.

F. Applicability

This Ordinance applies to property used or intended for use for commercial or industrial purposes. This Ordinance shall not apply to properties upon which construction commenced prior to February 27, 2003; nor shall this Ordinance apply to properties that have received a necessary permit from Travis County and/or the Texas Commission on Environmental Quality (TCEQ) prior to February 27, 2003.

G. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

H. Duration

This Ordinance is enacted for a limited duration and shall be in effect for an initial term of one hundred and twenty (120) days from the effective date, or until expressly repealed by the Village Commission. The Village Commission may vote to extend the duration of this Ordinance as reasonable and necessary.

2. DEFINITIONS

A. General

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases that are not defined in this Ordinance but are defined in other ordinances of the Village shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

B. Specific

- (1) **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.
- (2) **Excavate** means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, jetting, driving, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches. The term includes mining and quarrying. The term does not include excavation or grading when conducted solely in aid of on-site gardening, farming or residential construction.
- (3) **Excavations** mean workings, pits, quarries, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions. The term does not include excavation or grading when conducted solely in aid of on-site gardening, farming or residential construction.
- (4) **Mine or Mining** means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use. The term does not include excavation or grading when conducted solely in aid of on-site gardening, farming or residential construction.

- (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.
- (6) **Quarry** means the site where aggregates are being or have been removed or extracted from the earth to form the pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.
- (7) **Quarrying** means the current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.
- (8) **Surface Mining** means the mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface.
- (9) **Village** means the Village of Webberville, an incorporated municipality located in Travis County, Texas, its agents and employees.

3. PERMIT REQUIRED

- A. No person may clear, excavate, mine or quarry without first applying for and receiving and Excavation Permit from the Village of Webberville.
- B. It shall be unlawful for any person, firm, or corporation to divide land as described above without first making application to the Village for plat approval, and receiving such plat approval from the Village.

4. TEMPORARY SUSPENSION

The Village's acceptance, review and approval of all Excavation Permit applications within the Village Limits (i.e., incorporated municipal boundary) is hereby temporarily suspended and prohibited.

5. 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 (\$1,000.00) 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.

6. REPEALER

All Ordinances or parts of Ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

7. SEVERABILITY

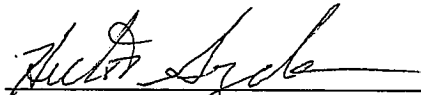
It is hereby declared to be the intention of the Village Commission that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

8. PROPER NOTICE AND MEETING


It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED this the 27th day of February, 2003, by a vote of 3 (ayes) to 0 (nays) to 0 (abstentions) of the Village Commission of the Village of Webberville, Texas.

VILLAGE OF WEBBERVILLE

by: 
Hector Gonzalez, Mayor

ATTEST:


Carol Goodrich, Village Clerk

APPROVED AS TO FORM:


Alan J. Bojorquez, Village Attorney

Attachments Upon Passage:

- meeting agenda
- meeting minutes
- publisher's affidavit & newspaper notice, and copy of notice posted in 3 public places