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ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2013-011

Description:

Amend City Code Chapters 25-1 and 25-5 relating to vested development rights under Chapter 245 and Section 43.002 of the Texas Local Government Code.

Background:

The proposed ordinance relates to the review and evaluation of “vested rights” claims, which means, in general terms, a claim by a landowner that permit applications for a development project are subject to regulations other than those in effect on the date the application is submitted. On March 28, 2013, the City Council adopted Ordinance No. 20130328-019 (See Attachment “A”), which repealed portions of the City’s vested rights regulations and initiated the development of a new vested rights ordinance. In preparing the ordinance, the Council directed the City Manager to ensure compliance with State law and to consider the procedures and ordinances adopted by other Texas cities. A comparison chart of vesting rights ordinances from other Texas City Codes is attached to this report as Attachment “F.”

Departmental Comments:

The proposed ordinance (See Attachment “B”) includes review and decision-making procedures for evaluating the distinct types of vested rights provided for under Chapter 245 (See Attachment “C”) and Section 43.002 (See Attachment “D”) of the Texas Local Government Code. The ordinance also amends the rules applicable to permit expiration for dormant projects and adopts new expiration periods that would apply to projects started after the effective date of the ordinance. A copy of the current City dormant projects regulations is attached (Attachment “E”).

The basic provisions of the proposed ordinance address these key provisions:

1. The ordinance covers the different kinds of “vested rights” protections afforded by Chapter 245 and Section 43.002 of the Local Government Code. (The latter deals specifically with continuing uses begun prior to annexation; the former is the general statute on vested development rights);
2. Establishes requirements for obtaining recognition of vested rights for a project, with an emphasis on providing information relevant to the nature, scope and intensity of the project and the project’s development history;
3. Provides general criteria for reviewing vested rights claims and explains the factors that affect vested rights (e.g., whether a project has changed or been completed).

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4. Requires a written decision by the director explaining the basis for a vested rights determination. A decision approving a vested rights claim must include the date that rights are determined to have accrued and any conditions necessary to ensure consistency with the original project for which vested rights are recognized.
5. Amends the dormancy requirements applicable to projects that are not subject to permit expiration dates.
6. Adopts new expiration periods to apply prospectively, for projects begun after adoption of the ordinance. Expiration periods are longer than under old project duration ordinance, avoid conflicts with existing site plan expiration periods, and provide for extensions.
7. Authorizes council to approve "project consent agreements" establishing the development regulations applicable to a project if: (1) a development's vested rights are unclear; or (2) a developer with clearly established vested rights proposes a project more consistent with current regulations. Agreements cannot be considered unless recommended by the director or initiated by council.
8. Authorizes the director to adopt guidelines to help address common questions that arise in reviewing vested rights claims.

Staff Recommendation:

Staff recommends approval of the proposed code amendment.

Planning Commission's Codes and Ordinance Subcommittee:

September 17, 2013: Forward amendment to the Planning Commission without a recommendation and with a request for an executive session. (Vote: 5-0)

Planning Commission Action:

August 13, 2013: Referred amendment to the Codes and Ordinance Subcommittee. (Vote: 5-0)

September 24, 2013: Approved staff requested postponement to October 8, 2013. (Vote 7-0)

City Council Date and Action:

August 8, 2013: Set a public hearing for August 29, 2013. (Vote: 7-0)

August 29, 2013: Approved staff requested postponement to October 3, 2013.

Ordinance Number:

City Staff: Greg Guernsey

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email: greg.guernsey@ci.austin.tx.us

ORDINANCE NO. 20130328-019

AN ORDINANCE AMENDING CITY CODE CHAPTER 25-1 RELATING TO PROJECT DURATION AND PROJECT DORMANCY; INITIATING CODE AMENDMENTS TO CHAPTER 25-1 RELATING TO VESTED RIGHTS APPLICATIONS; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Chapter 25-1 (*General Requirements and Procedures*) is amended to repeal Article 12 (*Project Duration*).

PART 2. The city council initiates amendments to Title 25 (*Land Development*) of the City Code to clarify and improve the review procedures and criteria for applications asserting vested rights under Chapter 245 of the Local Government Code. In preparing a proposed ordinance for consideration by council, the city manager should consider the ordinances and procedures used by other cities.

PART 3. The city council finds that clarifying the requirements for vested rights applications under Chapter 245 of the Local Government Code constitutes an emergency. Because of this emergency, this ordinance takes effect immediately upon its passage for the immediate preservation of the public peace, public health, and safety,

PASSED AND APPROVED

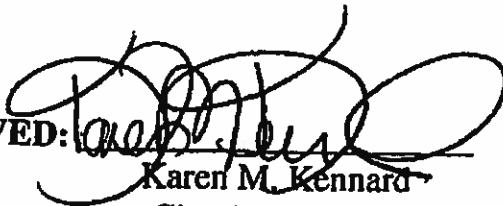
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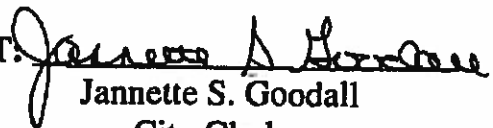
Lee Leffingwell
Mayor

APPROVED:



Karen M. Kennard
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk

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ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE CHAPTERS 25-1 AND 25-5 RELATING TO REQUIREMENTS FOR VESTED DEVELOPMENT RIGHTS UNDER CHAPTER 245 AND CONTINUING USE RIGHTS UNDER SECTION 43.002 OF THE TEXAS LOCAL GOVERNMENT CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The city council finds:

A. Local ordinances play a critical role in the implementation of state vested rights laws by: (1) ensuring that determinations of vested rights are based on complete information; (2) establishing clear procedures for review of claims; and (3) providing developers, landowners, and community residents with needed certainty regarding when new construction will be required to meet current regulations.

B. On March 28, 2013, the City Council adopted Ordinance No. 20130328-019, which repealed portions of the City's vested rights regulations and initiated the development of a new vested rights ordinance. In preparing the ordinance, the Council directed the city manager to ensure compliance with state law and to consider the procedures and ordinances adopted by other Texas cities.

C. Based on this review, and on consultation with legal counsel, staff determined that state law does not prohibit a municipality from adopting reasonable expiration dates that limit how long a project may remain undeveloped before construction will be required to comply with current regulations. Expiration periods under the Land Development Code are within the range of expiration periods used by other Texas municipalities.

D. The requirements and procedures of this ordinance are consistent with state law and draw upon the best practices of other municipalities in implementing state vested rights legislation.

PART 2. City Code Chapter 25-1 (*General Requirements and Procedures*) is amended to add a new Article 12 to read as follows:

ARTICLE 12. VESTED RIGHTS.

DIVISION 1.

PETITION SUBMITTAL AND REVIEW PROCEDURES.

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1 **§ 25-1-531 DEFINITIONS.**

2 (1) In this article, "permit," "project," and "regulatory agency" have the meanings
3 assigned to them by Chapter 245 of the Local Government Code.

4 (2) PLAT NOTE means a note required by the City of Austin to be placed on the
5 face of a subdivision plat in order to impose a discretionary condition on site
6 development or to secure performance of an obligation not otherwise required by the
7 ordinances, regulations, or rules in effect on the date of plat approval.

8 (3) TYPE 1 (CHAPTER 245) PETITION means a vested rights petition that alleges
9 rights under Chapter 245 of the Local Government Code to develop property under
10 ordinances, regulations, or rules other than those in effect on the date the permit
11 application is submitted.

12 (4) TYPE 2 (CONTINUING USE) PETITION means a vested rights petition that
13 alleges rights under Section 43.002 of the Local Government Code to continue or begin a
14 land use that was begun or planned prior to annexation.

15 (5) VESTING DATE means the date on which a project accrued development
16 rights under Chapter 245 or use rights under Section 43.002 of the Local Government
17 Code.

18 (6) VESTED RIGHTS means a right conferred by state law to develop property
19 under ordinances, regulations, or rules other than those in effect on the date a permit
20 application is submitted. The term includes development rights under Chapter 245 and
21 use rights under Section 43.002 of the Local Government Code, but does not include a
22 right existing under common law.

23 (7) VESTED RIGHTS PETITION or PETITION means a petition requesting a
24 determination of development rights under Chapter 245 or use rights under Section
25 43.002 of the Local Government Code.

26
27 **§ 25-1-532 PURPOSE AND APPLICABILITY.**

28 (A) This article establishes requirements for determining whether a project is
29 entitled to vested rights under Chapter 245 or Section 43.002 of the Local Government
30 Code. To the extent a project is entitled to vested rights, as determined under this article,
31 a permit necessary to initiate, continue, or complete the project may be exempt from
32 current regulations.

33 (B) The purpose of this article is to:

34 (1) Establish a clear and consistent process for evaluating vested rights
35 claims;

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(2) Ensure that vested rights determinations are based on accurate and complete information, including the nature and scope of the original project for which vested rights are asserted and actual development that has occurred over time; and

(3) Recognize legitimate claims of vested rights under state law, while ensuring that new development complies to the greatest extent possible with current regulations.

(C) The requirements of this article apply within the planning jurisdiction.

§ 25-1-534 VESTED RIGHTS PETITION REQUIRED.

A petition for vested rights that meets the requirements of Section 25-1-535 (*Contents of Vested Rights Petition*) must be submitted by a landowner or a landowner's agent in order to request that an application for a permit be reviewed under ordinances, regulations, or rules other than those in effect on the date the application is filed.

§ 25-1-535 CONTENTS OF VESTED RIGHTS PETITION.

(A) Except as provided in Subsection (B) of this section, a petition for vested rights required by Section 25-1-534 (*Vested Rights Petition Required*) must be submitted on a form approved by the director and must include, at a minimum, the following information:

(1) reference to one of the following applications, which must be submitted concurrent with the vested rights petition:

(a) a permit application for development of the property; or

(b) a fair notice application submitted under Section 25-1-536(B) (*Fair Notice Application*);

(2) a summary of the basis on which the applicant claims vested rights;

(3) the date on which the applicant claims that vested rights accrued and any permit, fair notice, or other application that was submitted on that date; and

(4) a complete chronological history of the project for which vested rights are claimed, including:

(a) a list of permits for development of the property, along with supporting documents, that were issued or applied for after the date the applicant claims that vested rights accrued;

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- (b) a description of any permitted or unpermitted development that occurred on the property after the date the applicant claims that vested rights accrued;
 - (c) a description of existing development on the property, regardless of whether the development is permitted or unpermitted;
 - (d) a list of all annexations and zoning changes affecting the property, if any;
 - (e) any covenants, conditions, or restrictions recorded in the deed records for the property; and
 - (f) if deemed relevant by the director, evidence regarding progress towards completion of the project under Section 25-1-553 (*Permit Expiration for Dormant Projects*).

(B) The director may allow an applicant to omit information required under this section if, in the sole judgment of the director, an application is associated with a project for which vested rights have been conclusively established by a court order or by a settlement agreement or project consent agreement approved by the city council.

§ 25-1-536 FAIR NOTICE APPLICATION.

(A) A fair notice application may be used in lieu of a permit application to establish vested rights for a new project or to support a petition requesting a vested rights determination for a continuing project under Section 25-1-534 (*Vested Rights Petition Required*).

(B) The director shall adopt the following fair notice applications:

(1) A Fair Notice Application (Continuing Project) for subdivisions and site plans, which may be used to request a vested rights determination under Section 25-1-535 (*Contents of Vested Rights Petition*) based on one or more prior permit applications. The fair notice application must include information deemed necessary by the director to define the nature of the permit sought, including the scope and intensity of development and the nature of the land use, but need not include construction-level detail.

(2) A Fair Notice Application (New Project), which may be used to establish a vesting date for a new project that is filed for review under current regulations and for which no prior permits have been sought. The application must include a proposed plan for development of the property, including the scope and intensity of development and the nature of the land use, but need not include construction-level detail.

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(C) A fair notice application expires unless, on or before the deadline established by Section 25-1-82 (*Application Requirements and Expiration*), the application is updated to include all information required for a complete permit application.

(D) Acceptance of a fair notice application does not authorize construction or have any effect other than that prescribed by this article.

§ 25-1-537 COMPLETENESS REVIEW FOR VESTED RIGHTS PETITION.

A vested rights petition and associated development application are treated as a single application for purposes of completeness review and expiration under Section 25-1-82 (*Application Requirements and Expiration*).

DIVISION 2. VESTED RIGHTS DETERMINATIONS.

§ 25-1-541 VESTED RIGHTS DETERMINATION.

(A) Not later than 10 working days after acceptance of a complete vested rights petition, the director shall review the petition under Section 25-1-542 (*Criteria for Approval*) and render a determination consistent with the requirements of this section.

(B) In acting on a petition, the director may:

(1) approve the petition and require the development applications necessary to initiate, continue, or complete the project to be reviewed in accordance with regulations in effect on the vesting date, except for those regulations exempt from vesting under state law;

(2) deny the petition and require the development application associated with the project to be reviewed under current regulations of this title; or

(3) approve the petition in part, as authorized by Subsection (C) of this section.

(C) The director may approve a petition in part if a project is legally entitled to some, but not all, of the rights asserted in the petition, or if a change in the scale or intensity of development is necessary to maintain conformity with the original project. A vested rights determination may not waive or modify applicable regulations or provide relief not required by Chapter 245 or Section 43.002 of the Local Government Code.

(D) The director shall provide a written determination to the applicant, which must state:

(1) Whether the petition is approved or denied, in whole or in part, and the basis for the decision;

- (2) The permit or fair notice application on which the petition is based; and
- (3) If the application is approved:
 - (a) a description of the project for which vested rights are recognized; and
 - (b) a vesting date.

(E) An applicant may request that the director reconsider a vested rights determination at any time before the application expires under Section 25-1-82 (*Application Requirements and Expiration*). The director's decision on a reconsideration request is final and not subject to further reconsideration.

(F) A vested rights determination under this section does not affect the availability of a variance or other administrative remedy authorized by this title.

§ 25-1-542 CRITERIA FOR APPROVAL.

(A) The director shall review a Type 1 (Chapter 245) petition for vested rights under the criteria described in this subsection.

(1) General Standard. A permit application is entitled to development rights under Chapter 245 of the Local Government Code if the permit is required to initiate, continue, or complete a project for which a prior application was submitted to the City of Austin. An application is not entitled to development rights if it is unrelated to or inconsistent with the original project or if the original project has been completed, changed, or expired.

(2) Review Criteria. In determining whether a petition meets the standard for approval under this subsection, the director shall consider the following factors:

- (a) The nature and extent of proposed development shown on the prior permit or other application that initiated the project for which vested rights are claimed;
- (b) Whether the permit application submitted in connection with the vested rights petition is related to and consistent with the original project;
- (c) The nature and extent of prior development of the property, including any permitting or construction activity that occurred subsequent to the vesting date requested by the applicant;
- (d) Any prior vested rights determinations made for development of the property; and

(e) Whether the project has expired in accordance with Division 3 (*Expirations and Extensions*) of this article or other applicable regulations.

(B) The director shall review a Type 2 (Continuing Use) petition for vested rights under the criteria described in this subsection.

(1) General Standard. A permit application is entitled to use rights under Section 43.002 of the Local Government to the extent that current regulations would prohibit:

(a) continuing to use the land in the manner in which it was being used on the date the annexation proceedings were instituted, if the land use was legal at that time; or

(b) beginning to use land in the manner that was planned before the 90th day before the effective date of the annexation if:

(i) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(ii) a completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted.

(2) Review Criteria. In determining whether a petition meets the standard for approval under this subsection, the director shall consider the nature and extent of development that:

(a) occurred on the property prior to initiation of annexation proceedings, including photographs or other evidence substantiating the use; or

(b) was proposed in one or more required applications submitted to a governmental entity.

(3) Date of Annexation. For purposes of this subsection, annexation proceedings are deemed to have been instituted on the date of the first public hearing before the city council on the annexation ordinance for the property.

(C) The criteria in this section are intended to assist the director in reviewing Type 1 (Chapter 245) and Type 2 (Continuing Use) petitions for vested rights, but do not limit the director from considering other factors relevant to the determination of rights for a particular project.

1 **§ 25-1-543 EFFECT OF VESTED RIGHTS DETERMINATION.** C2/11

2 If the director approves a vested rights petition, any permit required to initiate,
3 continue, or complete the project shall be entitled to the development or continuing use
4 rights recognized by the vested rights determination, unless the project expires under
5 Division 3 (*Project Expiration*) of this article or other applicable regulations.
6

7 **§ 25-1-544 PROJECT CONSENT AGREEMENTS.**

8 (A) The section provides a voluntary mechanism for determining applicable
9 regulations where the extent of a project's vested rights are unclear and for incentivizing
10 projects with clearly established vested rights to achieve greater compliance with current
11 regulations.

12 (B) An applicant may submit a request for a project consent agreement to the
13 director, in writing, after the director issues a vested rights determination under Section
14 25-1-541 (*Vested Rights Determinations*) and before the application expires under
15 Section 25-1-82 (*Application Requirements and Expiration*). The request must identify:

- 16 (1) current regulations for which compliance would be required, other than
17 regulations exempt from vested rights protections under state law;
18 (2) additional restrictions on the nature and intensity of the proposed
19 development; and
20 (3) any modifications or waivers requested as a condition to the agreement,
21 including but not limited to provisions for the transfer or averaging of
22 impervious cover to include additional property or changes to the original
23 project that increase compatibility with adjacent land uses.

24 (C) The director may recommend a project consent agreement for approval to the
25 city council if the director finds that the agreement achieves a greater degree of
26 environmental protection or compatibility with adjacent land uses than would occur if a
27 project developed to the full extent of its claimed vested rights.

28 (D) In making a determination under Subsection (C) of this section, the director
29 shall consider:

- 30 (1) the degree to which vested rights for the project have been established;
31 (2) the importance of particular regulations to achieving adopted planning
32 goals or policies for the area in which the project is located; and
33 (3) a recommendation from the environmental officer regarding the
34 environmental benefits of the proposed agreement, if vested rights from the
35 regulations of Chapter 25-8 (*Environment*) are asserted for the project.

(E) The city council may consider approval of a project consent agreement under this section only if the agreement is recommended by the director or initiated by the city council. Before acting on a consent agreement, the council shall hold a public hearing and the director shall provide notice of the hearing under Section 25-1-132(B) (*Notice of Public Hearing*).

(F) In acting on a project consent agreement, the city council may approve, deny, or modify the agreement based on the standard applicable to the director's review under Subsections (C) and (D) of this section. A project consent agreement may waive or modify site development regulations applicable to a project as deemed appropriate by the city council.

(G) A project consent agreement is subject to the expiration requirements specified in this subsection.

(1) A project consent agreement approved by the city council expires on the 90th day after approval, unless the applicant has submitted a complete site plan application for review by the director under the terms of the agreement.

(2) Following submittal of a site plan application, a project consent agreement expires if:

(a) the site plan application expires under Section 25-1-82 (*Application Requirements and Expiration*); or

(b) the site plan expires under Section 25-5-81 (*Site Plan Expiration*).

(3) In approving a project consent agreement, the city council may extend the expiration periods established under this subsection.

§ 25-1-545 ADMINISTRATIVE GUIDELINES.

(A) The director may adopt guidelines to assist in reviewing petitions for vested rights under Section 25-1-542 (*Criteria for Approval*) and proposed project consent agreements under Section 25-1-544 (*Project Consent Agreements*).

(B) Guidelines adopted under this section may be used to help address common questions that arise in determining vested rights, including but not limited to:

(a) whether a permit application is consistent with the project for which vested rights are claimed;

(b) whether a project has been completed or changed;

(c) whether progress towards completion has been made under Section 25-1-553 (*Permit Expiration for Dormant Projects*); and

1 (d) the effect of plat notes associated with a project.

2 (C) Guidelines adopted under this section shall be posted on the department's
3 website and made available to the public, but need not be adopted by administrative rule
4 under Section 1-2 (*Adoption of Rules*).
5

6 **DIVISION 3.**
7 **EXPIRATIONS.**

8 **§ 25-1-551 EXPIRATION REQUIREMENTS GENERALLY.**

9 (A) During the timeframes established under this division, a vested rights
10 determination for a project approved under Section 25-1-541 (*Vested Rights*
11 *Determination*) applies to any permit application required to initiate, continue, or
12 complete the project.

13 (B) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights*
14 *Determination*) is based on a permit application that is submitted on or after {insert
15 *effective date of ordinance*}, the project is subject to the expiration periods specified in
16 Section 25-1-552 (*Expiration of Projects Begun On or After {Insert Effective Date}*).

17 (C) If all permits for a project expire, the project expires.

18 (D) A permit application submitted after a project expires constitutes a new project
19 and is subject to the current regulations of this title, except that:

20 (a) if a site plan associated with a project remains active at the time the
21 project expires, the vested rights determination for the project applies to any
22 application for a building permit necessary to complete construction of the site
23 plan for as long as the site plan remains active; and

24 (b) an application to extend a site plan associated with a project may be
25 approved in accordance with Section 25-5-62 (*Extension of Released Site Plan*
26 *by Director*) or Section 25-5-63 (*Extension of Released Site Plan by The Land*
27 *Use Commission*).

28 (E) The expiration of a project associated with a preliminary plan or a final plat
29 does not affect the validity of a platted lot under this title.
30

31 **§ 25-1-552 EXPIRATION OF PROJECTS BEGUN ON OR AFTER _____.**

32 (A) The project expiration periods under this section apply if the vesting date
33 approved for a project under Section 25-1-541 (*Vested Rights Determination*) is based on
34 a permit application that is submitted on or after {insert *effective date of ordinance*}.

35 (B) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights*
36 *Determination*) is based on a preliminary plan, the project expires:

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(1) in the desired development zone, the later of:

(a) five years after the date an application for a preliminary plan was submitted; or

(b) for a lot within a single-family or duplex subdivision that is platted before the preliminary plan expires under Section 25-4-62 (*Expiration of Approved Preliminary Plan*) or Section 30-2-62 (*Expiration of Approved Preliminary Plan*), five years after the date a final plat application was approved for the lot; and

(2) in the drinking water protection zone, the later of:

(a) three years after the date an application for a preliminary plan was submitted; or

(b) for a lot within a single-family or duplex subdivision that is platted before the preliminary plan expires under Section 25-4-62 (*Expiration of Approved Preliminary Plan*) or Section 30-2-62 (*Expiration of Approved Preliminary Plan*), three years after the date a final plat application was approved for the lot.

(C) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights Determination*) is based on a final plat that is not associated with a preliminary plan, the project expires:

(1) in the desired development zone, five years after the date a final plat application was submitted; or

(2) in the drinking water protection zone, three years after the date a final plat application was submitted.

(D) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights Determination*) is based on a site plan, the project expires on the date that the site plan expires under Chapter 25-5, Article 1, Division 4 (*Revision, Extension, and Replacement*) or other applicable regulation.

(E) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights Determination*) is based on a building permit, the project expires on the date that building permit expires under Section 25-12-267 (*Expiration*) or other applicable regulation.

(F) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights Determination*) is based on an application not specifically addressed in this section, the project expires on the dates provided for a final plat under Subsection (C) of this section.

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PART 3. City Code Chapter 25-1 (*General Requirements and Procedures*) is amended to repeal Article 13 (*Dormant Project Expiration*) and to add a new Section 25-1-553 to read as follows:

§ 25-1-553 PERMIT EXPIRATION FOR DORMANT PROJECTS.

(A) This section is adopted under Section 245.005 of the Local Government Code to provide expiration dates for permits that lack an expiration date under applicable regulations. This section does not apply to a permit that is subject to an expiration date under the regulations applicable to the permit. For purposes of this section, a permit that is not subject to an expiration date is an “unexpired permit.”

(B) If an unexpired permit was approved prior to May 11, 2000, then the permit expired on May 11, 2004, unless the applicant submits evidence sufficient to show that progress towards completion of the project was made under Subsection (D) of this section prior to May 11, 2000.

(C) If an application for an unexpired permit was submitted after September 5, 2005, then the permit expires five years after the permit was approved unless the applicant submits evidence sufficient to show that progress towards completion of the project was made prior to that date under Subsection (D) of this section.

(D) For purposes of this section, progress towards completion of a project includes any one of the following:

- (1) an application for a final plat or plan is submitted to a regulatory agency;
- (2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
- (3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
- (4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- (5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

PART 4. City Code Chapter 25-1 (*General Requirements and Procedures*) is amended to repeal Article 7, Division 4 (*Special Exceptions*) and to renumber Division 5 (*Adjustments*) accordingly.

PART 5. City Code Section 25-5-62 (*Extension of Released Site Plan by Director*) is amended to add a new Subsection (D) to read as follows and to renumber the remaining subsections accordingly:

(D) If a site plan is associated with a project that has expired for purposes of vested rights under Chapter 25-1, Article 12, Division 3 (*Expirations*), the director may extend the expiration date of the site plan one time for a period of one year under the requirements of this subsection.

(1) If the site plan substantially complies with the requirements that would apply to a new application, the director may grant an extension if the criteria in Subsection (C) of this section are satisfied.

(2) If the site plan does not substantially comply with the requirements that would apply to a new application, the director may grant an extension if the there is good cause for the requested extension and:

(a) the applicant filed the original application for site plan approval with the good faith expectation that the site plan would be constructed; and

(b) the requirements for a traffic impact analysis under Subsection (C)(2) of this section have been met; and

(c) the applicant constructed at least one structure shown on the original site plan that is suitable for permanent occupancy; or

(d) the applicant has constructed a significant portion of the infrastructure required for development of the original site plan.

PART 6. City Code Section 25-1-82 (*Application Requirements*) is amended to read as follows:

§ 25-1-82 APPLICATION REQUIREMENTS AND EXPIRATION.

(A) The responsible director may adopt rules establishing the requirements for an application.

(B) The responsible director or building official may permit an applicant to omit required information from an application that the responsible director or building official determines is not material to a decision on the application. An applicant who disagrees with a determination under this subsection may appeal the decision to the city manager.

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(C) ~~[Except as provided in Subsection (B), the]~~ The responsible director or building official may not accept an application unless the application is determined to be complete in accordance with this subsection ~~[and the applicant has paid the required fee]~~.

(1) The responsible director or building official shall accept an application as complete if the applicant has paid the required fee and provided the information required to be included in the application no later than the 45th day after the application is submitted.

(2) If an application is rejected as incomplete, the responsible director or building official shall provide the applicant a written explanation identifying the deficiencies and the information required to complete the application 10 working days after receipt of the application.

(3) An application expires if it is not complete on or before the 45th after the application is submitted. An applicant may submit an update to provide additional information and to correct deficiencies at any time before the application expires.

PART 7. This ordinance takes effect on _____, 2013.

PASSED AND APPROVED

_____, 2013 §
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 Lee Leffingwell
 Mayor

APPROVED: _____
 Karen Kennard
 City Attorney

ATTEST: _____
 Jannette S. Goodall
 City Clerk

LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND
RELATED ACTIVITIES

SUBTITLE C. REGULATORY AUTHORITY APPLYING TO MORE THAN ONE TYPE OF
LOCAL GOVERNMENT

CHAPTER 245. ISSUANCE OF LOCAL PERMITS

Sec. 245.001. DEFINITIONS. In this chapter:

(1) "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.

(2) "Political subdivision" means a political subdivision of the state, including a county, a school district, or a municipality.

(3) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

(4) "Regulatory agency" means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 6, Sec. 1, eff. April 27, 2005.

Sec. 245.002. UNIFORMITY OF REQUIREMENTS. (a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the

basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

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(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or

(2) a plan for development of real property or plat application is filed with a regulatory agency.

(a-1) Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the

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project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

(1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided; and

(3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

(f) This chapter does not prohibit a regulatory agency from requiring compliance with technical requirements relating to the form and content of an application in effect at the time the application was filed even though the application is filed after the date an applicant accrues rights under Subsection (a-1).

(g) Notwithstanding Section 245.003, the change in law made to Subsection (a) and the addition of Subsections (a-1), (e), and (f) by S.B. No. 848, Acts of the 79th Legislature, Regular Session, 2005, apply only to a project commenced on or after the effective date of that Act.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 6, Sec. 2, eff. April 27, 2005.

Sec. 245.003. APPLICABILITY OF CHAPTER. This chapter applies only to a project in progress on or commenced after September 1, 1997. For purposes of this chapter a project was in progress on September 1, 1997, if:

(1) before September 1, 1997:

(A) a regulatory agency approved or issued one or more permits for the project; or C2/24

(B) an application for a permit for the project was filed with a regulatory agency; and

(2) on or after September 1, 1997, a regulatory agency enacts, enforces, or otherwise imposes:

(A) an order, regulation, ordinance, or rule that in effect retroactively changes the duration of a permit for the project;

(B) a deadline for obtaining a permit required to continue or complete the project that was not enforced or did not apply to the project before September 1, 1997; or

(C) any requirement for the project that was not applicable to or enforced on the project before September 1, 1997.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Sec. 245.004. EXEMPTIONS. This chapter does not apply to:

(1) a permit that is at least two years old, is issued for the construction of a building or structure intended for human occupancy or habitation, and is issued under laws, ordinances, procedures, rules, or regulations adopting only:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or

(B) local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons;

(2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;

(3) regulations that specifically control only the use of land in a municipality that does not have zoning and that do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, or building size;

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- (4) regulations for sexually oriented businesses;
- (5) municipal or county ordinances, rules, regulations, or other requirements affecting colonias;
- (6) fees imposed in conjunction with development permits;
- (7) regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;
- (8) regulations for utility connections;
- (9) regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;
- (10) construction standards for public works located on public lands or easements; or
- (11) regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:
 - (A) affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building size, residential or commercial density, or the timing of a project; or
 - (B) change development permitted by a restrictive covenant required by a municipality.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by Acts 2003, 78th Leg., ch. 646, Sec. 1.

Amended by:

Acts 2005, 79th Leg., Ch. 31, Sec. 1, eff. September 1, 2005.

Sec. 245.005. DORMANT PROJECTS. (a) After the first anniversary of the effective date of this chapter, a regulatory agency may enact an ordinance, rule, or regulation that places an expiration date on a permit if as of the first anniversary of the effective date of this chapter: (i) the permit does not have an expiration date; and (ii) no progress has been made towards completion of the project. Any ordinance, rule, or regulation enacted pursuant to this subsection shall place an expiration date of no earlier than the fifth anniversary of the effective date of this chapter.

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(b) A regulatory agency may enact an ordinance, rule, or regulation that places an expiration date of not less than two years on an individual permit if no progress has been made towards completion of the project. Notwithstanding any other provision of this chapter, any ordinance, rule, or regulation enacted pursuant to this section shall place an expiration date on a project of no earlier than the fifth anniversary of the date the first permit application was filed for the project if no progress has been made towards completion of the project. Nothing in this subsection shall be deemed to affect the timing of a permit issued solely under the authority of Chapter 366, Health and Safety Code, by the Texas Commission on Environmental Quality or its authorized agent.

(c) Progress towards completion of the project shall include any one of the following:

(1) an application for a final plat or plan is submitted to a regulatory agency;

(2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;

(3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

(4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or

(5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 31, Sec. 1, eff. September 1, 2005.

Sec. 245.006. ENFORCEMENT OF CHAPTER. (a) This chapter may be enforced only through mandamus or declaratory or injunctive

relief.

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(b) A political subdivision's immunity from suit is waived in regard to an action under this chapter.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 31, Sec. 1, eff. September 1, 2005.

Sec. 245.007. CONSTRUCTION AND RENOVATION WORK ON COUNTY-OWNED BUILDINGS AND FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a building or facility that is owned by a county with a population of 3.3 million or more and is located within the boundaries of another political subdivision.

(b) A political subdivision may not require a county to notify the political subdivision or obtain a building permit for any new construction or any renovation of a building or facility owned by the county if the construction or renovation work is supervised and inspected by an engineer or architect licensed in this state.

(c) This section does not exempt a county from complying with the building standards of the political subdivision during the construction or renovation of the building or facility.

Added by Acts 2005, 79th Leg., Ch. 532, Sec. 1, eff. June 17, 2005.

ATTACHMENT "D"

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Sec. 43.002. CONTINUATION OF LAND USE.

(a) A municipality may not, after annexing an area, prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date the annexation proceedings were instituted if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the annexation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances; or

(7) a regulation relating to the sale and use of fireworks.

(8) Expired.

(d) A regulation relating to the discharge of firearms or other weapons is subject to the restrictions in Section 229.002.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 2, eff. Sept. 1, 1999.

Amended by: Acts 2005, 79th Leg., Ch. 18, Sec. 3, eff. May 3, 2005.

ARTICLE 13. DORMANT PROJECT EXPIRATION.**§ 25-1-551 DEFINITIONS.**

In this article, "permit," "project," and "regulatory agency" have the meanings assigned to them by Texas Local Government Code Chapter 245 (*Issuance Cf Local Permits*).

Source: Ord. 20050512-035.

§ 25-1-552 EXPIRATION OF PERMITS AND PROJECTS.

(A) A permit expires on May 11, 2004 if the director determines that:

- (1) the permit did not have an expiration date; and
- (2) no progress had been made towards completion of the project.

(B) Progress towards completion of the project includes any one or more of the following:

- (1) an application for a final plat or plan is submitted to a regulatory agency;
- (2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
- (3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
- (4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- (5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

(C) If all permits for a project expire, the project expires.

Source: Ord. 20050512-035.

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**Vested Rights Ordinances:
A Comparison Chart of Texas City Codes**

City	Application Requirements	Review Criteria	Procedures for Administrative Relief	Expirations
Austin – Staff Proposed Ordinance	<ul style="list-style-type: none"> • Vested rights application reviewed concurrent with permit application. • Applicant must include project history and identify basis for vested rights claim. • Application expires in 45 days if incomplete. Vested rights decision due 10 days from date of complete application. 	<ul style="list-style-type: none"> • Specifies general criteria for determining whether a project has changed or been completed. • Authorizes director to adopt administrative guidelines. • Distinguishes rights under Chapter 245 and Sec. 43.002. 	<ul style="list-style-type: none"> • No appeal of vested rights decision. • For difficult cases, council may approve consent agreement if recommended by director or on council's own initiation. 	<ul style="list-style-type: none"> • Dormancy under Chapter 245 applies if permit lacks an expiration date. • Projects begun after adoption of new ordinance subject to expiration periods established by the ordinance. Clock starts to run with first permit in the series and allows longer time than prior "project duration" ordinance. • Project expires if all permits for the project expire.
Bee Cave	<ul style="list-style-type: none"> • Vested rights application reviewed separately from permit application. • Applicant must include project history and identify basis for vested rights claim. • Application expires in 45 days if incomplete. Vested rights decision due 45 days from date of complete application. 	<ul style="list-style-type: none"> • States that modifications to "land uses, densities or intensities" constitute a "new project," but does not specify criteria. • States that burden is on applicant to establish vested rights. 	<ul style="list-style-type: none"> • Administrative denial of vested rights may be appealed to city council. • City may approve consent agreement based on assessment of legal exposure and outcome of potential litigation. 	<ul style="list-style-type: none"> • Dormancy under Chapter 245 applies if permit lacks an expiration date. • Other projects expire if no "progress towards completion" is made within 5 years from the date of any permit in the series. (Similar to Dormancy, but requires progress to be made more frequently).

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City	Application Requirements	Review Criteria	Procedures for Administrative Relief	Expirations
Buda	<ul style="list-style-type: none"> • Vested rights application reviewed separately from permit application. • Vested rights decision due 30-days from date of complete application. 	<ul style="list-style-type: none"> • No specified criteria for determining whether a project has changed or been completed. • Distinguishes Chapter 245, Sec. 43.002, and common law vested rights. 	<ul style="list-style-type: none"> • Denial of vested rights may be appealed to city council. • Consent agreements authorized if applicant agrees to limitations on project. 	<ul style="list-style-type: none"> • Dormancy under Chapter 245 applies if permit lacks expiration date. • Vested rights expire when permit expires, which (for permits subject to current code) is typically 24 months unless a variance from expiration period is approved.
Lakeway	<ul style="list-style-type: none"> • Vested rights application reviewed separately from permit application. • Vested rights decision due 20-days from date of complete application. 	<ul style="list-style-type: none"> • Specifies general criteria for what constitutes a "new project" (i.e., increases in land area, uses that require rezoning, construction already completed etc.) 	<ul style="list-style-type: none"> • Denial of vested rights may be appealed to city council. 	<ul style="list-style-type: none"> • Dormancy under Chapter 245 applies if permit lacks an expiration date.
Round Rock	<ul style="list-style-type: none"> • Vested rights application reviewed separately from permit application. • Vested rights decision, or request for additional information, due 20 days from date of application. 	<ul style="list-style-type: none"> • No specified criteria for determining whether project has changed or been completed. • Distinguishes Chapter 245, Sec. 43.002, and common law vested rights. 	<ul style="list-style-type: none"> • No administrative appeals or consent agreements. 	<ul style="list-style-type: none"> • Requires applicant for Chapter 245 rights to show that project is not Dormant. • Provides that vested rights do not extend beyond the time periods prescribed for validity of underlying permit.

City	Application Requirements	Review Criteria	Procedures for Administrative Relief	Expirations
San Antonio	<ul style="list-style-type: none"> • Vested rights application reviewed separately from permit application. • Applicant must include project history and identify basis for vested rights claim. • Vested rights decision, or request for additional information, due 20 days from date of application. 	<ul style="list-style-type: none"> • Specifies detailed criteria for determining whether project has changed or been completed. • Distinguishes Chapter 245 and common law vested rights. 	<ul style="list-style-type: none"> • Denial of vested rights may be appealed to planning commission and city council. • Consent agreements authorized to resolve disputes, subject to limitations. 	<ul style="list-style-type: none"> • Dormancy under Chapter 245 applies if permit lacks expiration date, but "progress towards completion" required to be met every 5 years. • Other projects expire if specified benchmarks are not met within timeframes established by ordinance, which begin to run following first permit for a project.
San Marcos	<ul style="list-style-type: none"> • Vested rights application reviewed concurrently with permit application. • Applicant must include project history and identify basis for vested rights claim. • Decision-maker for permit (i.e., staff, commission, or council) also reviews and decides vested rights application. • Vested rights decision due 10 days from date of complete application. 	<ul style="list-style-type: none"> • Specifies general criteria for determining whether a project has changed or been completed. 	<ul style="list-style-type: none"> • Decisions on vested rights application may be appealed to city council. (Unlike other codes, appeal rights granted to interested parties other than landowner). 	<ul style="list-style-type: none"> • Dormancy under Chapter 245 applies if permit lacks expiration date, but "progress towards completion" criteria applied differently depending on date of approval. • Vested rights decision expires when permit application expires.

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City	Application Requirements	Review Criteria	Procedures for Administrative Relief	Expirations
<p>West Lake Hills</p>	<ul style="list-style-type: none"> • Vested rights may be reviewed concurrent with or prior to submission of permit application. Code establishes inter-departmental review committee. • Application must describe basis for vested rights claim and include detailed information regarding project history. • Decision on vested rights application due 14 days from date of complete application, unless extended by planning commission secretary. Code provides for pre-decision conferences. 	<ul style="list-style-type: none"> • Specifies criteria for determining what constitutes a "new project" or a "substantial change." • Places burden on applicant to establish vested rights and declares a policy favoring compliance with current code. 	<ul style="list-style-type: none"> • Administrative denial of vested rights may be appealed from review committee to city administrator, then to board of adjustment. • No consent agreements, but specifies that development agreements and special zoning districts to modify applicable regulations. 	<ul style="list-style-type: none"> • Dormancy under Chapter 245 applies to permits that lack an expiration date and to all projects where no progress towards completion is made within 5 years from the date the first application is filed.