

ORDINANCE AMENDMENT REVIEW SHEET

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Amendment: C20-2013-011

Description:

Amending City Code Chapters 25-1 and 25-5 relating to vested development rights and use continuing rights under the Texas Local Government Code, and Chapter 24-4 and 30-2 relating to subdivision plats.

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 On March 28, 2013, the City Council adopted Ordinance No. 20130328-019 (See Attachment “A”), which repealed portions of the City’s vested rights regulations and initiated the development of a new vested rights ordinance.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.”

Since October 8, 2013, City Staff has met with representatives of the development community and environmental community. Based on the input Staff has received from these stakeholders, Staff has revised its recommendation. Specific comments have been provided by the Real Estate Council of Austin (RECA) and representatives of the environmental community (See attachments “G” and “H,” respectively. Staff has also included amendments to Chapter 25-4 and Title 30, regarding subdivision development within the City limits and the Extra Territorial Jurisdiction (ETJ) of Travis County.

Departmental Comments:

The revised 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

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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).
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.

Addition Changes Recommended by Staff since October 8, 2013:

9. Part 2. Section 25-1-542, **CRITERIA FOR APPROVAL**: Add language to clarify rights that may exist under common law vested rights.
10. Part 2. Section 25-1-544: **PROJECT CONSENT AGREEMENTS**: Add language to recognize a proposed development agreement per Section 212.172 of the Local Government Code that relate to projects located in the ETJ.
11. Part 2. Section 25-1-552: **EXPIRATION OF PROJECTS BEGUN ON OR AFTER _____ (effective date the ordinance)**: Changes the project expiration date associated with a preliminary plan to match the plan expiration date as it applies under Section 25-4-62 and Section 30-2-62 (applicable to the ETJ of Travis County). In addition, creates a project expiration date for a fair notice application of one year.

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12. Part 2. Section 25-1-553: MANAGED GROWTH AGREEMENTS: Add a new section for Managed Growth Agreements (MGA) that must be filed under current regulations, located within the City's zoning jurisdiction, not located within the Barton Springs Zone and at least 250 acres in size or partially located within a Regional Center or Town Center identified in the Growth Concept Map of the Imagine Austin Comprehensive Plan. It is the City Council's decision to approve or deny a MGA after a Staff review and recommendation that is based on certain criteria.
13. Part 5. Section 25-1-2, Applicability of Regulations: Addresses the applicability of regulations to address vested rights in the Planning Jurisdiction.
14. Part 7: Section 25-2-62: EXPIRATION OF APPROVED PRELIMINARY PLAN: Establishes a uniform preliminary plan expiration date of five years from the date of approval, regardless of its geographic location within the Planning Jurisdiction (with the exception noted in #15 below).
15. Part 9: Section 30-2-062, Extension of Approved Preliminary Plan: Amends the Preliminary Plan expiration date for projects located within the ETJ portion of Travis County to be 5 years regardless of location, but only with the concurrent approval by the Travis County Commissioners Court.

Addition Changes Recommended by Staff since February 25, 2014:

16. Part 2, Section 25-1-531: Definitions: Deleted definition for "Plat Note."
17. Part 3. Section 25-1-553 MANAGED GROWTH AGREEMENTS: Added language under subparagraph (B) that excludes projects that require a variance, except for residential uses that don't require a site plan; and to the recommendation criteria under subparagraph (D) the determination whether or not the project is environmentally superior to the minimum environmental standards applicable to a project under Chapter 25-8 (Environment).
18. Part 3. Section 25-1-554, DORMANT PROJECTS: Renamed and renumbered previous dormant project section, and added new subparagraph (E) that states if the first permit in a series of permits for a project expires based on dormancy of the project, then it cannot form the basis of a vested right petition.

Revised Staff Recommendation:

Staff recommends approval of the proposed code amendment. See Attachment "B"

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)

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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)
October 8, 2013: Approved the ordinance as request by Staff. (Vote: 8-0) See Attachment "I."
February 25, 2014: Approved postponement request from RECA and SOS. Item was postponed to 03-25-2014. (Vote: 9-0)
March 25, 2014: Approved postponement request from RECA and SOS. Item was postponed to 04-8-2014. (Vote:)

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 (Vote 7-0)
October 3, 2013: Approved staff requested postponement to October 17, 2013 (Vote: 7-0)
October 17, 2013: Approved staff requested postponement to November 7, 2013 (Vote: 7-0)
November 7, 2013: Withdrawn.
December 12, 2013: Approved staff/RECA requested postponement to Jan. 30, 2014 (Vote: 7-0)
January 30, 2014: Approved staff requested postponement to January 30, 2014 (Vote: 7-0)
March 6, 2014: Approved staff requested postponement to 04-10-2014. (Vote: 7-0)

Ordinance Number:

City Staff: Greg Guernsey **Phone:** 512-974-2387 **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*).

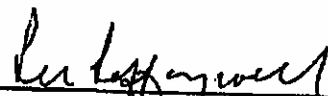
PART 2. The city council initiates amendments to Title 25 (*Land Development*) of the City Code to clarify and improve the review procedures and criteria for applications asserting vested rights under Chapter 245 of the Local Government Code. In preparing a proposed ordinance for consideration by council,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

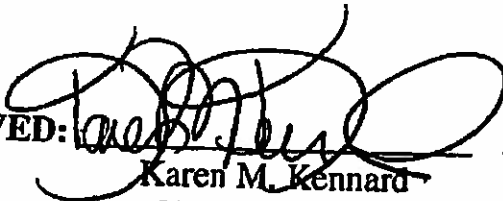
March 28, 2013

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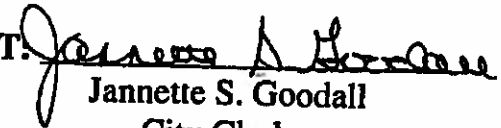
Lee Leffingwell
Mayor

APPROVED:



Karen M. Kennard
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk

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ORDINANCE NO.

1 AN ORDINANCE AMENDING CITY CODE CHAPTERS 25-1 AND 25-5
2 RELATING TO VESTED DEVELOPMENT RIGHTS AND CONTINUING USE
3 RIGHTS UNDER THE TEXAS LOCAL GOVERNMENT CODE AND
4 CHAPTERS 24-4 AND 30-2 RELATING TO SUBDIVISION PLATS.
5

6 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
7

8 PART 1. The city council finds:

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

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

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

25 D. The requirements and procedures of this ordinance are consistent with state
26 law and draw upon the best practices of other municipalities in implementing state vested
27 rights legislation.
28

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

31 **ARTICLE 12. VESTED RIGHTS.**

32 **DIVISION 1.**

33 **PETITION SUBMITTAL AND REVIEW PROCEDURES.**

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

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

11 (4) VESTING DATE means the date on which a project accrued development
12 rights under Chapter 245 or use rights under Section 43.002 of the Local Government
13 Code.

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

19 (6) VESTED RIGHTS PETITION or PETITION means a petition requesting a
20 determination of development rights under Chapter 245 or use rights under Section
21 43.002 of the Local Government Code.

22 **§ 25-1-532 PURPOSE AND APPLICABILITY.**

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

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

30 (1) Establish a clear and consistent process for evaluating vested rights
31 claims;

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

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(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 application or fair notice 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;

(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;

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- (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 25-1-554 (*Expiration of 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), which may be used to request a vested rights determination under Section 25-1-534 (*Vested Rights Petition Required*) based on a prior application submitted for the project. The fair notice application must include information deemed necessary by the director to establish the nature of the permit sought, including the scope and intensity of development and the type of 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.

(C) 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.

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1 A vested rights petition and associated permit or fair notice application are treated as a
2 single application for purposes of completeness review and expiration under Section 25-
3 1-82 (*Application Requirements and Expiration*).
4

5 **DIVISION 2.**
6 **VESTED RIGHTS DETERMINATIONS.**

7 **§ 25-1-541 VESTED RIGHTS DETERMINATION.**

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

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

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

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

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

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

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

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

29 (2) The permit or fair notice application on which the petition is based; and

30 (3) If the application is approved:

31 (a) a description of the project for which vested rights are recognized;
32 and

33 (b) a vesting date.

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

5 (F) A vested rights determination under this section does not affect the availability
6 of a variance or other administrative remedy authorized by this title.
7

8 **§ 25-1-542 CRITERIA FOR APPROVAL.**

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

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

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

20 (a) The nature and extent of proposed development shown on the prior
21 permit or other application that initiated the project for which vested
22 rights are claimed;

23 (b) Whether the permit application submitted in connection with the
24 vested rights petition is related to and consistent with the original project;

25 (c) The nature and extent of prior development of the property,
26 including any permitting or construction activity that occurred
27 subsequent to the vesting date requested by the applicant;

28 (d) Any prior vested rights determinations made for development of
29 the property; and

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

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

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

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(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. The director may consider whether a project is entitled to common law vested rights if the project is not subject to Chapter 245 or Section 43.002 of the Local Government Code.

§ 25-1-543 EFFECT OF VESTED RIGHTS DETERMINATION.

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

§ 25-1-544 PROJECT CONSENT AGREEMENTS.

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

5 (B) An applicant may submit a request for a project consent agreement to the
6 director, in writing, after the director issues a vested rights determination under Section
7 25-1-541 (*Vested Rights Determination*) and before the application expires under Section
8 25-1-82 (*Application Requirements and Expiration*). The request must identify:

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

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

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

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

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

34 (F) In acting on a project consent agreement, the city council may approve, deny, or
35 modify the agreement based on the standard applicable to the director's review under
36 Subsections (C) and (D) of this section. A project consent agreement may waive or

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1 modify site development regulations applicable to a project as deemed appropriate by the
2 city council.

3 (G) A project consent agreement for a project located in the extraterritorial
4 jurisdiction may include a development agreement as authorized under Section 212.172
5 of the Local Government Code. The director shall review a proposed development
6 agreement concurrent with an application for a project consent agreement, but council
7 may consider the agreements separately or as a single agreement.

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

10 (1) A project consent agreement approved by the city council expires on the
11 90th day after approval, unless the applicant has submitted a complete site plan
12 application for review by the director under the terms of the agreement.

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

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

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

18 (3) In approving a project consent agreement, the city council may extend
19 the expiration periods established under this subsection.
20

21 § 25-1-545 ADMINISTRATIVE GUIDELINES.

22 (A) The director may adopt guidelines to assist in reviewing applications under
23 Section 25-1-534 (*Vested Rights Petition Required*), Section 25-1-544 (*Project Consent*
24 *Agreements*), and Section 25-1-553 (*Managed Growth Agreements*).

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

28 (a) whether a permit application is required to continue, complete, or initiate
29 the project for which vested rights are claimed;

30 (b) whether the project for which vested rights are claimed has been
31 completed, changed, or expired; and

32 (c) whether progress towards completion of a project has been made under
33 Section 25-1-554 (*Dormant Projects*).

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

**DIVISION 3.
EXPIRATIONS.**

§ 25-1-551 EXPIRATION REQUIREMENTS GENERALLY.

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

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

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

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

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

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

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

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

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

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

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(1) on the date the preliminary plan expires under Section 25-4-62 (*Expiration of Approved Preliminary Plan*) or Section 30-2-62 (*Expiration of Approved Preliminary Plan*); or

(2) for any lot that is platted before the preliminary plan expires, nine years after the date the preliminary plan was approved.

(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 four years after the date the final plat was approved.

(D) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights Determination*) is based on a fair notice application (new project) submitted under Section 25-1-536 (*Fair Notice Application*), the project expires one year after the date the application was submitted.

(E) 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.

(F) 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.

(G) 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 date provided for a final plat under Subsection (C) of this section.

§ 25-1-553 MANAGED GROWTH AGREEMENTS.

(A) This section provides a voluntary mechanism to request longer project expiration periods than those established under Section 25-1-552 (*Expiration of Projects Begun On or After {Insert Effective Date}*) for large-scale projects or projects located within a planned development center.

(B) A project may be considered for a managed growth agreement only if the project:

(1) is filed for review under current regulations;

(2) is located within the zoning jurisdiction, outside of the Barton Springs Zone;

(3) does not require a variance, unless the project is limited to residential uses that do not require a site plan under Section 25-5-2 (*Exemptions*); and

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(4) includes at least 250 acres or is located wholly or partially within a regional center or town center designated by the Growth Concept Map of the Imagine Austin Comprehensive Plan.

(C) An application for a managed growth agreement must:

(1) contain all information required by the director, including a proposed project expiration date; and

(2) be submitted concurrent with the first application for the project or before the review period expires.

(D) If an application for a proposed managed growth agreement meets the requirements of Subsection (B) of this section, the director shall:

(1) schedule a public hearing on the proposed agreement and provide notice of the hearing under Section 25-1-532(B); and

(2) make a recommendation to approve or deny the agreement based on whether the project is likely to:

(a) require a longer period of time to construct than the timeframes established under Section 25-1-552 (*Expiration of Projects Begun On or After {Insert Effective Date}*);

(b) substantially further specific goals and policies of the Imagine Austin Comprehensive Plan; and

(c) result in development that is environmentally superior to the minimum standards applicable to the project under Chapter 25-8 (*Environment*), as determined based on a recommendation from the environmental officer.

(E) The city council may approve or deny a proposed managed growth agreement based on the criteria in Subsection (D)(2) of this section and may establish whatever expiration period the council deems appropriate, but may not waive or modify current regulations applicable to the project.

(F) If a managed growth agreement is approved under this section, the director shall treat the project as vested to the regulations in effect on the date of the first application until the date the agreement expires.

PART 3. City Code Chapter 25-1 (*General Requirements and Procedures*) is amended to repeal Article 13 (*Dormant Projects*) and to add a new Section 25-1-554 to read as follows:

§ 25-1-554 DORMANT PROJECTS.

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(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.

(E) If the first permit in a series of permits for a project expires based on dormancy of the project, then it cannot form the basis of a vested rights petition.

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. Subsection (A) of City Code Section 25-1-2 (*Applicability of Regulations*) is amended to read:

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(A) Regulations in this title apply as follows:

(1) except as provided in Paragraph (5) and Subsection (B), all regulations apply to property in the zoning jurisdiction;

(2) except as provided in Subsection (B), water quality, utility district, city utility, and subdivision regulations apply to property in the planning jurisdiction;

(3) Chapter 25-1, Article 12 (*Vested Rights*) applies to projects in the planning jurisdiction;

(4) Chapter 25-12, Article 4 (*Electrical Code*) applies to a structure served by the City's electric utility;

(5)[(4)] Chapter 25-12, Article 6 (*Uniform Plumbing Code*) applies to a structure served by the City's water utility; and

(6)[(5)] Chapter 25-13 (*Airport Hazard and Compatible Land Use Regulations*) applies in the geographic area described in that chapter.

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

§ 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.

(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.

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(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. City Code Section 25-4-62 (*Expiration of Approved Preliminary Plan*) is amended to read:

§ 25-4-62 EXPIRATION OF APPROVED PRELIMINARY PLAN.

An approved preliminary plan expires five years after the date the application for approval of the preliminary plan is approved[:

~~(1) in the drinking water protection zone, three years after the date the application for its approval is filed; or~~

~~(2) in the desired development zone, five years after the date the application for its approval is filed].~~

PART 8. 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

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

PART 9. Subsection (B) of City Code Section 30-2-62 (*Expiration of Approved Preliminary Plan*) is amended to read:

(B) Except as provided in Subsection [~~(B)~~] (C), an approved preliminary plan expires:

- (1) in the drinking water protection zone, five [~~four~~] years after the date of its approval; or
- (2) in the desired development zone, five [~~ten~~] years after the date of its approval.

PART 10. Parts 1-8 of this ordinance takes effect on _____, 2014. Part 9 of this ordinance takes effect on the effective date of a Travis County ordinance adopting an amendment substantially identical to that contained in Part 9.

PASSED AND APPROVED

_____, 2014

§
§
§

Lee Leffingwell
Mayor

APPROVED:

Karen Kennard
City Attorney

ATTEST:

Jannette S. Goodall
City Clerk

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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

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

(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:

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

(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.

(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.

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ATTACHMENT "D"

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 of 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.

Disclaimer:

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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
West Lake Hills	<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.

**RECA**REAL ESTATE COUNCIL
OF AUSTIN

ATTACHMENT "G"

C1/35

March 24, 2014

The Honorable Lee Leffingwell, Mayor of Austin
and Members of the Austin City Council
301 W. 2nd Street
Austin, TX 78701

RE: Proposed Vested Rights Ordinance

Dear Mayor Leffingwell and Members of the City Council:

Vested rights and the City of Austin's policy related to project duration and expiration are critical issues to our membership and, ultimately, the community. As you are well aware, the Real Estate Council of Austin's position has been very clear that state law, specifically Section 245.005(b) of the Texas Local Government code, supersedes any municipal ordinance attempting to expire development projects and prohibits the ordinance that the city is currently contemplating. Our position was affirmed by a Texas Attorney General opinion in December 2012. RECA's position continues to be that the proposed Vested Rights Ordinance, to the extent it establishes project expiration dates, is contrary to state law.

Nonetheless, without waiving that position and in the interest of creating an ordinance that would lessen the potential adverse consequences and reduce future disputes, a RECA working group met with city planning department officials in late 2013 to work on changes to the proposed ordinance. Chief among the goals was to discuss time frames that would minimize these impacts according to the needs of our members and the community's desire to have high-quality development projects which, like Avery Ranch, Southpark Meadows, the Domain, Hyde Park and Travis Heights, can take decades to build.

A new Vested Rights Ordinance, delivered to RECA and other interested parties just two business days before the Tuesday February 25 Planning Commission meeting, failed to address, among other important things, the length of time needed to properly complete projects. It was postponed to the March 25 Planning Commission meeting.

After acting in good faith with the city to improve the ordinance, even though state law is on our side, we are making a last-ditch effort to incorporate elements into the ordinance that would make the ordinance less impactful to our members and reduce future disputes.

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Procedure

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- The City Attorney should make the determination, not the Planning Director. We would like to see the City Attorney make these decisions since they amount to legal determinations and opinions.
- The determination must include specific findings of fact and conclusions of law. Currently these are not provided. Our members typically receive verbal explanations which continually change or get misstated. We need the city to be on record with specific justifications than can be reviewed.
- After reconsideration, administrative remedies are complete. The ordinance, as currently written, suggests that if an applicant disagrees with a vested rights determination, the applicant should go through a variance process before contesting the city's determination. We believe that an applicant should be free to immediately contest such a fundamental determination after a reconsideration.

Project Consent Agreements (PCA)

- The Land Use Commission should decide a PCA. Since subdivisions are considered by the Land Use Commission, it would be more efficient to have the commission decide a PCA at the same time it considers the subdivision.
- The applicant only should be able to appeal to city council. The applicant should have the ability to appeal a Land Use Commission decision on a PCA to City Council in case the Land Use Commission has made errors. Other groups should not have those appeal rights because it would defeat the purpose of having PCAs go to the Land Use Commission to avoid the politicization of these issues.

Project Expiration

- There should be a flat 13-year project expiration for all projects. The city's ordinance allows up to 13 years of grandfathering administratively for commercial projects with successive applications with a process that is not practical and will lead to "game playing." Instead, since 13 years of grandfathering is acceptable to the city, keep the ordinance simple and allow for that time period for all projects.

Managed Growth Agreements (MGA)

- Eliminate subsection (B) requirements regarding current regulations, size and location. As proposed, MGAs would only be available for new projects that exceed 250 acres and are located in the city limits outside the Barton

**RECA****REAL ESTATE COUNCIL
OF AUSTIN****C1/37**

Springs Zone. The concern about size is addressed by the requirement in subsection (C) that an MGA project "require a longer period of time to construct" and the concern about the BSZ is addressed by the requirement that the MGA project "result in development that is environmentally superior". With those two requirements, there is no need to draw an arbitrary 250 acre line or limit this to non-BSZ properties.

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Instituting these provisions in the ordinance would greatly reduce the number of potential disputes that could arise and would prove workable in the majority of cases. We hope the council will seriously consider these recommended changes. In the meantime, with state law on our side, we are reviewing other remedies to ensure the integrity of vested rights in land development.

Sincerely,

KC Willis

Chair, Real Estate Council of Austin



RECA

REAL ESTATE COUNCIL
OF AUSTIN

ATTACHMENT "G"

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October 10, 2013

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The Honorable Lee Leffingwell, Mayor of Austin
and Members of the Austin City Council
301 W. 2nd Street
Austin, TX 78701

RE: Vested development rights

Dear Mayor Leffingwell and Members of the City Council:

As you know, the issue of vested rights and the City's policy related to project duration and expiration are of the utmost concern to RECA members. We believe the Attorney General opinion is clearly correct and that the City does not have any authority to impose project expiration in conflict with Section 245.005(b) of the Texas Local Government Code. RECA reserves its right to assert that any ordinance adopted by the City that is contrary to that statute is illegal.

However, in an effort to minimize the disputes that will arise if the City ignores the Attorney General opinion and passes a project expiration ordinance anyway, we feel that changes to the draft ordinance (which is unreasonable as it is now, especially Division 3) are necessary:

- The City should tie project expiration to first permit *approval* and not submittal.
- If the City wants to keep a project expiration time frame simple, it must be for a long enough period to truly be a "one size fits all" time frame. We believe a **minimum of 20 years** should be that time period given how long large projects take, the effect of economic cycles, and the difficulty of the City review and approval process.
- There should be no distinction between desired development zone (DDZ) and drinking water protection zone (DWPZ) because: (1) this will apply prospectively to projects that meet current code, and current code in the DWPZ is already very, very restrictive and has been mostly unchanged for 20 years; and (2) projects do not take any less time in the DWPZ, and in fact probably take more, than they do in the DDZ, and that distinction is arbitrary.
- A project should not expire as long as there are unexpired permits active, including subdivision construction plans, building permits, and site plans.

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- Projects should be able to get a Managed Growth Agreement (MGA) if they need longer than 20 years. The criteria for granting them should not be overly restrictive. For example, MGAs should be available to large, long-term, and civic projects without having to go through an arduous "public benefit" analysis. As in the prior code, MGAs should allow the extension of permits so that the re-filing of permits with shorter expiration dates than that allowed by an MGA is not necessary.
- The ordinance should not provide that "if all permits expire, the project expires".

The above are broad comments regarding project expiration, and RECA is likely to have other specific comments to the ordinance language that relate to project expiration and the process for making vested rights determinations which we will provide the City legal department. Thank you for your attention to this matter, and please do not hesitate to contact me if you have questions or concerns.

Sincerely,



Nikelle Meade
Board Chair

ATTACHMENT "H"

C1/40

January 21, 2014

Greg Guernsey
Director of Planning
& Development Review
City of Austin

by email: Greg.Guernsey@AustinTexas.gov

Re: Proposed vest rights ordinance

Dear Mr. Guernsey:

Thank you for meeting with us last week. The meeting afforded those of us who are advocates for the environment a rare opportunity to try to push back a small amount against the relentless onslaughts by developers beginning in the 1980s that allowed developers' desire for investment certainty to wholly supersede cities' attempts to protect their citizens from environmental degradation and other threats to the community. Grandfathered exemptions from environmental regulations have been steadily expanded since the 1980s, with the Legislature initiating some of the exemptions and the City of Austin initiating others at the behest of the Real Estate Council of Austin and others.

The cumulative impact on the City's regulatory authority has been devastating. It is extremely rare for a development project to have to comply with the SOS Ordinance, even though Austin citizens overwhelmingly voted to enact it more than 20 years ago, back in 1992. Although tremendous work has been put into improving watershed ordinances for East Austin and into a rewrite of the Land Development Code, it appears that these new ordinances will not be applicable to major development projects for a long time in the future, if ever.

Repeal of the Project Duration Ordinance

But RECA is not done. The most recent travesty was the City's unilateral repeal in 2013, at the behest of RECA, of its longstanding project duration ordinance, an ordinance that was actually protected by and incorporated into the Chapter 245 grandfathering process. Until the City repealed it. All the environmental organizations in Austin opposed this repeal.

Planning Commission Approved a Replacement Project Duration Ordinance

A replacement ordinance was subsequently drafted by you and City legal staff. This draft ordinance contains significant compromises that will make it difficult to ensure City environmental regulations are consistently applied. The Planning Commission approved this compromise Ordinance in early October 2013. This was not enough for RECA. After the Planning Commission approved the ordinance, RECA approached City Council members and City staff to get additional concessions that will further expand the regulatory exemptions bestowed on developers. It gravely concerns us that you seem poised to agree with any of the RECA

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recommendations, which would further compromise the severely battered ability of the City to get anyone to comply with current or future environmental and development regulations.

RECA has some problems with the version of the project duration ordinance prepared by city staff and approved by the Planning Commission. We have some problems too, but we were prepared to accept the staff and Planning Commission ordinance. We do not understand why the process has been completely reopened for second-guessing at this time and we again urge that it not be.

If the ordinance is going to be re-opened, it should be strengthened in favor of enhanced local control and community participation, not further weakened. The entire procedure created pursuant to this ordinance excludes input and consideration by neighbors and members of the public who are supposed to be protected by environmental and other land use regulations. The ordinance should require timely and immediate notice to interested parties when a vested rights petition or fair notice application is submitted and when a vested rights determination or project duration determination or expiration date extension determination is made. Interested parties should be able to appeal these determinations to the Planning Commission and City Council in most, if not all, cases.

Another problem is that the criteria for project consent agreements set forth in 25-1-544(C) are vague to the point of meaninglessness. One criterion is that the applicant show that the exemption from current regulations would create "a greater degree of environmental protection." The way things work in Austin is: all a developer has to do is say his project is "high density infill" as opposed to "sprawl" or it is "LEEDs certified" and these magic incantations cause City staff and the Council to automatically conclude the project offers "a greater degree of environmental protection." It should be made clear that "greater protection" does not mean greater protection than the ordinance to which the applicant claims grandfathering when there is simply no basis in fact or law to support the grandfathering claim. Yet it appears that this is exactly what will happen. The meaningless and arbitrary standard for project consent agreements contained in this draft should be replaced by specific rigorous standards reflecting the values of the community. The legitimacy and compliance should be required to be documented by objective and scientific analysis.

RECA's latest shameless ploy

No special privileges the City bestows on developers are ever going to be good enough for RECA. No matter how much the City bends over to please, developers will always be approaching the City Council and Legislature to gain additional exemptions from laws that protect our community. On October 10, Nikellie Meade on behalf of RECA sent a letter to Mayor Lee Leffingwell and the City Council asking for additional major exemptions from

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environmental regulation in the new project duration ordinance. RECA in fact has the audacity to ask the City for much greater exemptions from City regulations than RECA even has been able to secure from the Texas Legislature under Chapter 245. Shamelessly, RECA also asserts that whatever form this ordinance takes, "RECA reserves its right to assert that any ordinance adopted by the City" is illegal pursuant to Chapter 245.

One outrageous request in Meade's letter is that the time period during which any project should be grandfathered from current environmental regulations is a minimum of 20 years! The only Chapter 245 reference to any time frame in any context is five years. § 245.005 (project dormancy). It is also worth remembering that the House sponsor of Chapter 245, Edmund Kuempel, can be seen in Laura Dunn's film "The Unforeseen" laughing on the House floor about a "hypothetical" that developers might claim 20 years of grandfathering.

But even 20 years is not enough for RECA. They also ask for the right of developers to enter into "Managed Growth Agreements" with the City to lock in obsolete regulations for more than 20 years. If this isn't overreaching, we don't know what is. It is unconstitutional for cities to contract away their legislative powers to private parties in this way. *Clear Lake City Water Authority v. Clear Lake Utilities Co.*, 549 S.W.2d 385, 391-92 (Tex. 1977); *Super Wash Inc. v. City of White Settlement*, 131 S.W.3d 249, 257 (Tex. App. Fort Worth 2004), *rev'g other part of judgment* 198 S.W.3d 770 (Tex. 2006); *City of Arlington v. City of Fort Worth*, 844 S.W.2d 875, 878 (Tex. App. — Fort Worth 1992, writ denied). Moreover, even if these kinds of agreements were legal, this ordinance would create agreements that offer nothing to the public in exchange for this financial boon to developers; the ordinance neither allows nor requires the City to secure any additional benefit for the community or the environment in return for this giant gift to developers.

Perhaps this ploy is not as outrageous as RECA's contention that no project should expire unless the underlying subdivision expires. Under current city ordinances, subdivisions never do expire unless a landowner decides to take action to replace them. So this would allow project duration to be forever. Additionally, RECA insists that a project should not expire so long as a site plan has not expired. This could allow a project to be extended indefinitely by a developer simply submitting another site plan before the previous one expired.¹

¹ City policy program manager Chuck Lesniak contends that the City will not allow a new site plan to be submitted unless the previous site plan has first expired. But a developer can submit a new site plan for different areas of a "project" before a site plan for another area has expired. And even if it were the current practice to not allow a new site plan for the entire site until after the previous one has expired, that doesn't mean that this is the way it is always going to be enforced in the future. A project duration ordinance shouldn't have to depend on assumed practices either separately codified or uncoded in order to ensure that a project duration ordinance is not ridiculous.

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RECA purports to be concerned that the different duration dates of five years for projects in the desired development zone and three years for projects in the drinking water protection zone is arbitrary. But of course, it is not geographical uniformity RECA is concerned about. RECA simply wants the expiration dates for the drinking water protection zones to be five years instead of three years. A rule that would better protect the environment and community and eliminate the arbitrariness that RECA complains about would make the expiration period uniformly three years no matter where, geographically, a project is located.

And finally, even though at the urging of RECA the submittal of an application has become under State law the trigger for the beginning of the grandfathering process, RECA now argues that this same submittal should not be the trigger that determines the length of time a project is grandfathered to obsolete regulations. This makes no sense. Developers often submit applications for projects that they have no intention of actually moving forward; the submission is merely an attempt to secure grandfathering rights. The proposal supported by RECA would allow developers to trigger grandfathering at the earliest time possible and slow down the application processing process in order to maximize the amount of time their projects are eligible for grandfathering. The ordinance should remain as written to avoid as much as possible the incentive to file applications that aren't really ready to be filed and, once filed, to then drag them out for as long as possible when the application was speculative at the outset. This demand in the Meade letter is just another ploy in RECA's relentless quest to tie the City to obsolete regulations as long as possible and to extend the life of applications that are made not for purposes of development but for speculation and grandfathering.

Conclusion

The City Council and City staff have done far too much for RECA already. RECA is never going to be satisfied, and in its letter expressly reserves the right to sue the City over the project duration ordinance no matter what concessions are granted to RECA and its members. For thirty years, the City has been pushed to apply increasingly obsolete regulations to more and more development projects due to the efforts by RECA and its allies. No matter what the staff and Council do with this project duration ordinance, RECA will always be back for more.

But today, please endorse the recommendations set forth in this letter and try to preserve the small possibility that someday grandfathered developments will actually have to comply with modern up-to-date regulations enacted by a democratically elected City Council, acting to protect the environment and the health, safety and welfare of the community. Elected officials and voters have every right to respond to changing circumstances in charting the future of our community: as RECA would have it, our powers of local control should be frozen even beyond the reach of Chapter 245 while only developers are allowed to respond to

C1/44

changing information and markets. This perspective, and RECA's specific demands, should be rejected in favor of an ordinance that supports local control and the democratic process.

Sincerely,



Brad Rockwell, J.D.



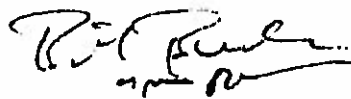
Doug Young, J.D.



Dr. Lauren Ross, P.E.



Marisa Perales, J.D.



Bill Bunch, J.D.

cc: City Council members, City of Austin

cl/45

ATTACHMENT "I"

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.

C1/4b

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

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

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

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

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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;

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- (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

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(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.

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

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.

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(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

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

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

DIVISION 3. EXPIRATIONS.

§ 25-1-551 EXPIRATION REQUIREMENTS GENERALLY.

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

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

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

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

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

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

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

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

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

(B) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights 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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1 **PART 3.** City Code Chapter 25-1 (*General Requirements and Procedures*) is amended
2 to repeal Article 13 (*Dormant Project Expiration*) and to add a new Section 25-1-553 to
3 read as follows:
4

5 **§ 25-1-553 PERMIT EXPIRATION FOR DORMANT PROJECTS.**

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

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

15 (C) If an application for an unexpired permit was submitted after September 5,
16 2005, then the permit expires five years after the permit was approved unless the
17 applicant submits evidence sufficient to show that progress towards completion of the
18 project was made prior to that date under Subsection (D) of this section.

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

- 21 (1) an application for a final plat or plan is submitted to a regulatory agency;
22 (2) a good-faith attempt is made to file with a regulatory agency an
23 application for a permit necessary to begin or continue towards completion of
24 the project;
25 (3) costs have been incurred for developing the project including, without
26 limitation, costs associated with roadway, utility, and other infrastructure
27 facilities designed to serve, in whole or in part, the project (but exclusive of
28 land acquisition) in the aggregate amount of five percent of the most recent
29 appraised market value of the real property on which the project is located;
30 (4) fiscal security is posted with a regulatory agency to ensure performance
31 of an obligation required by the regulatory agency; or
32 (5) utility connection fees or impact fees for the project have been paid to a
33 regulatory agency.
34

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

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

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

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

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

16
17 **PART 7.** This ordinance takes effect on _____, 2013.

18
19 **PASSED AND APPROVED**

20
21 _____, 2013

22 §
23 §
24 §

25 _____
26 Lee Leffingwell
27 Mayor

28 **APPROVED:**

29 _____
30 Karen Kennard
City Attorney

ATTEST:

Jannette S. Goodall
City Clerk