

ORDINANCE NO.

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

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B. On March 28, 2013, the City Council adopted Ordinance No. 20130328-019, which repealed portions of the City's vested rights regulations and initiated the development of a new vested rights ordinance.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 periods, to be applied prospectively, that limit how long a new 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.

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 of the land by the City of Austin.

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
23 **§ 25-1-532 PURPOSE AND APPLICABILITY.**

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

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, if any, that has
35 occurred over time; and

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

4 (C) The requirements of this article apply within the planning jurisdiction.
5

6 **§ 25-1-533 VESTED RIGHTS PETITION REQUIRED.**

7 A petition for vested rights that meets the requirements of Section 25-1-534 (*Contents*
8 *of Vested Rights Petition*) must be submitted by a landowner or a landowner's agent in
9 order to request that an application for a permit be reviewed under ordinances,
10 regulations, or rules other than those in effect on the date the application is filed.
11

12 **§ 25-1-534 CONTENTS OF VESTED RIGHTS PETITION.**

13 (A) Except as provided in Subsection (B) of this section, a petition for vested rights
14 required by Section 25-1-533 (*Vested Rights Petition Required*) must be submitted on a
15 form approved by the director and must include, at a minimum, the following
16 information:

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

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

20 (b) a development plan, on a form provided by the director, that
21 establishes the nature of the permit sought, including the scope and
22 intensity of proposed development and the type of land use, but need not
23 include construction-level detail;

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

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

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

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

32 (b) a description of any permitted or unpermitted development that
33 occurred on the property after the date the applicant claims that vested
34 rights accrued;

- 1 (c) a description of existing development on the property, regardless
2 of whether the development is permitted or unpermitted;
- 3 (d) a list of all annexations and zoning changes affecting the property,
4 if any;
- 5 (e) any covenants, conditions, or restrictions recorded in the deed
6 records for the property; and
- 7 (f) if deemed relevant by the director, evidence regarding progress
8 towards completion of the project under Section 25-1-554 (*Dormant*
9 *Projects*).

10 (B) The director may allow an applicant to omit information required under this
11 section if, in the sole judgment of the director, an application is associated with a project
12 for which vested rights have been conclusively established by a court order, or by a
13 settlement agreement or project consent agreement approved by the city council.
14

15 **§ 25-1-535 FAIR NOTICE APPLICATION.**

16 (A) A fair notice application may be used in lieu of a permit application to establish
17 vested rights for a new project.

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

24 (C) Acceptance of a fair notice application does not authorize construction or have
25 any effect other than that prescribed by this article.
26

27 **§ 25-1-536 COMPLETENESS REVIEW FOR VESTED RIGHTS PETITION.**

28 A vested rights petition and associated permit or Fair Notice (New Project) application
29 are treated as a single application for purposes of completeness review and expiration
30 under Section 25-1-82 (*Application Requirements and Expiration*).
31

32 ***DIVISION 2.***
33 ***VESTED RIGHTS DETERMINATIONS.***

34 **§ 25-1-541 VESTED RIGHTS DETERMINATION.**

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

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

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

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

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

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

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

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

22 (2) Findings of fact in support of the decision and information sufficient to
23 identify the permit or fair notice application on which the petition is based; and

24 (3) If the petition is approved:

25 (a) a description of the project for which vested rights are recognized;
26 and

27 (b) a vesting date.

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

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

1 variance is not required to exhaust administrative remedies for purposes of challenging a
2 determination by the director that a project is not entitled to vested rights.

3 (G) The director shall make vested rights petitions submitted under Section 25-1-
4 533 (*Vested Rights Petition Required*) and vested rights determinations issued under this
5 section available on the City of Austin's website.
6

7 **§ 25-1-542 CRITERIA FOR APPROVAL.**

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

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

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

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

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

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

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

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

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

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

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

4 (b) beginning to use land in the manner that was planned before the
5 90th day before the effective date of the annexation if:

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

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

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

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

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

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

23 (C) The criteria in this section are intended to assist the director in reviewing Type
24 1 (Chapter 245) and Type 2 (Continuing Use) petitions for vested rights, but do not limit
25 the director from considering other factors relevant to the determination of rights for a
26 particular project. The director may consider whether a project is entitled to common law
27 vested rights if the project is not subject to Chapter 245 or Section 43.002 of the Local
28 Government Code.

29 **§ 25-1-543 EFFECT OF VESTED RIGHTS DETERMINATION.**

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

34 **§ 25-1-544 PROJECT CONSENT AGREEMENTS.**

35

1 (A) This 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 and compatibility with adjacent land uses than would occur if a
20 project developed to the full extent of vested rights that have been verified or are
21 reasonably likely to exist for the project.

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

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

30 (E) The city council may consider approval of a project consent agreement under
31 this section only if the agreement is recommended by the director or initiated by the city
32 council. Before the council acts on a consent agreement, the director shall seek a
33 recommendation from the Environmental Board and the Land Use Commission, and the
34 council shall hold a public hearing. The director shall provide notice of the hearing under
35 Section 25-1-132(B) (*Notice of Public Hearing*).

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

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

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

13 (1) A project consent agreement approved by the city council expires on the
14 90th day after approval, unless the applicant has submitted a complete site plan
15 application for review by the director under the terms of the agreement.

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

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

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

21 (3) In approving a project consent agreement, the city council may extend
22 the expiration periods established under this subsection.
23

24 § 25-1-545 ADMINISTRATIVE GUIDELINES.

25 (A) The director may adopt guidelines to assist in reviewing applications under
26 Section 25-1-533 (*Vested Rights Petition Required*), Section 25-1-544 (*Project Consent*
27 *Agreements*), and Section 25-1-553 (*Managed Growth Agreements*).

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

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

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

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

(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 June 23, 2014, the project is subject to the expiration periods specified in Section 25-1-552 (*Expiration of Projects Begun On or After June 23, 2014*).

(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:

(1) if a site plan associate 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

(2) an application to extend a site plan associated with a project may be approved in accordance with Section 25-5-62 (*Extensions of Released Site Plan by Director*).

(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 JUNE 23, 2014.

(A) The project expiration period established by this section applies 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 June 23, 2014.

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

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

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

8 (C) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights*
9 *Determination*) is based on a final plat that is not associated with a preliminary plan, the
10 project expires four years after the date the final plat application was submitted.

11 (D) If the vesting date approved for a project under Section 25-1-541 (*Vested Rights*
12 *Determination*) is based on a fair notice application (new project) submitted under
13 Section 25-1-535 (*Fair Notice Application*):

14 (1) the project expires one year after the date the application was submitted;
15 or

16 (2) if a permit application is submitted before the fair notice application
17 expires, the project expires on the date applicable to the permit under this
18 section, except that the project expiration period shall be deemed to run from
19 the date of the fair notice application.

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

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

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

31 (H) Notwithstanding the expiration periods established in Subsections (B)-(G) of
32 this section, a project expires nine years after the vesting date approved for the project
33 under Section 25-1-541 (*Vested Rights Determination*).
34

35 **§ 25-1-553 MANAGED GROWTH AGREEMENTS.**

1 (A) This section provides a voluntary mechanism to request longer project
2 expiration periods than those established under Section 25-1-552 (*Expiration of Projects*
3 *Begun On or After June 23, 2014*) for large-scale projects or projects located within a
4 planned development center.

5 (B) To be accepted for review, an application for a proposed managed growth
6 agreement must include all information required by the director, including a proposed
7 expiration date, and must meet the requirements of this subsection.

8 (1) An application for a managed growth agreement may be submitted
9 concurrent with the first permit application, or before the review period expires,
10 if the project associated with the proposed agreement:

11 (a) is filed for review under current regulations;

12 (b) does not require a variance approved by the Land Use Commission
13 or Board of Adjustment, unless the project is limited to residential uses
14 that do not require a site plan under Section 25-5-2 (*Exemptions*);

15 (c) includes only property located within the zoning jurisdiction,
16 outside of the Barton Springs Zone; and

17 (d) includes at least 10 acres of land.

18 (2) An application for a managed growth agreement may be submitted after
19 approval of the first permit application, but no later than one year before the
20 project expires, if the project associated with the proposed agreement:

21 (a) complies with the regulations in effect on the date the application
22 for a managed growth agreement was submitted or, in extraordinary
23 circumstances, includes community benefits or superior development
24 features that mitigate noncompliance with current regulations;

25 (b) does not require a variance approved by the Land Use Commission
26 or Board of Adjustment, unless the project is limited to residential uses
27 that do not require a site plan under Section 25-5-2 (*Exemptions*);

28 (c) includes only property located within the zoning jurisdiction,
29 outside of the Barton Springs Zone; and

30 (d) does not impede or delay official City of Austin economic
31 development or sustainability initiatives.

32 (C) If an application meets the requirements in Subsection (B) of this section, the
33 director shall:

(1) schedule a public hearing on the proposed agreement and provide notice of the hearing under Section 25-1-132(B) (*Notice of Public Hearing*); and

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

(a) requires a longer period of time to construct than the timeframes established under Section 25-1-552 (*Expiration of Projects Begun On or After June 23, 2014*);

(b) furthers the goals and policies of the Imagine Austin Comprehensive Plan; and

(c) 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.

(D) The city council may approve or deny a proposed managed growth agreement based on the criteria in Subsection (C) 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.

(E) 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, Article 13 (*Dormant Projects*) is amended to read as follows:

[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*).]~~

§ 25-1-554 [25-1-552 EXPIRATION OF PERMITS AND] DORMANT PROJECTS.

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

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

5 (C) If an application for an unexpired permit was submitted after September 5,
6 2005, then the permit expires five years after the permit was approved unless the
7 applicant submits evidence sufficient to show that progress towards completion of the
8 project was made prior to that date under Subsection (D) of this section.

9 (D) [(B)] For purposes of this section, [Progress] progress towards completion of [the]
10 a project includes any one of the following:

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

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

26 ~~[(C) If all permits for a project expire, the project expires.]~~
27

28 **PART 4.** City Code Chapter 25-1 (*General Requirements and Procedures*) is amended
29 to repeal Article 7, Division 4 (*Special Exceptions*) and to renumber Division 5
30 (*Adjustments*) accordingly.
31

32 **PART 5.** Subsection (A) of City Code Section 25-1-2 (*Applicability of Regulations*) is
33 amended to read:

34 (A) Regulations in this title apply as follows:

- 35 (1) except as provided in Paragraph (5) and Subsection (B), all regulations
36 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.

(3) An application expires if it is not complete on or before the 45th day 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.

1 **PART 7.** City Code Section 25-4-62 (*Expiration of Approved Preliminary Plan*) is
2 amended to read:

3 **§ 25-4-62 EXPIRATION OF APPROVED PRELIMINARY PLAN.**

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

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

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

10
11 **PART 8.** City Code Section 25-5-62 (*Extension of Released Site Plan by Director*) is
12 amended to add a new Subsection (D) to read as follows and to renumber the remaining
13 subsections accordingly:

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

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

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

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

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

29 (c) one of the following requirements is met:

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

33 (ii) the applicant has constructed a significant portion of the
34 infrastructure required for development of the original site
35 plan.

