

ORDINANCE 2023-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE TEXAS AMENDING THE CITY OF PFLUGERVILLE UNIFIED DEVELOPMENT CODE; PROVIDING FOR EXPIRATION DATES FOR PERMITS AND PROJECTS; PROVIDING FOR PERMIT APPLICATION; PROVIDING FOR A PROCESS FOR DETERMINING VESTED RIGHTS

WHEREAS, Texas Local Government Code Chapter 245, (the “Code”) provides an opportunity for landowners or developers to “grandfather” or “vest” government regulations that apply to development at the time of the filing of a permit application; and,

WHEREAS, the Code authorizes municipalities to place expiration dates on permits and projects as specified by the Code; and,

WHEREAS, the City of Pflugerville’s Code of Ordinances provides specific processes for application and processing of certain permits but not permits generally; and,

WHEREAS, the City of Pflugerville Code of Ordinances does not provide a process for permit expiration and determination of vested rights; and,

WHEREAS, the City Council of the City of Pflugerville finds that it is in the best interest of the City to establish an administrative procedure for consideration of a claim of vested rights.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS THAT:

SECTION 1. The Pflugerville Unified Development Code is hereby amended as set forth in the attached Exhibit A with underlines being additions, double underlines being moved text, and ~~strikethroughs~~ being deletions.

SECTION 2. The provisions of this ordinance are declared to be severable. If any section, subsection, sentence, clause, phrase, or portion of this ordinance shall for any reason to be held invalid or unconstitutional by any court of competent jurisdiction, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance, but they shall remain in effect; it being the legislative intent that this ordinance shall remain in effect notwithstanding the validity of any part.

SECTION 3. All provisions of the ordinances of the City of Pflugerville in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and all other provisions of the ordinances of the City of Pflugerville not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. The provisions of this ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

SECTION 5. Effective Date. This Ordinance will take effect upon its adoption by the City Council and publication of the caption hereof in accordance with Section 3.15(d) of the City Charter.

PASSED AND APPROVED this _____ day of _____, 2023.

CITY OF PFLUGERVILLE, TEXAS

by:

VICTOR GONZALES, Mayor

ATTEST:

TRISTA EVANS, City Secretary

APPROVED AS TO FORM:

CHARLES E. ZECH, City Attorney
Denton Navarro Rocha Bernal & Zech, P.C.

EXHIBIT A

Subchapter 3 Procedures

3.10.5 Permit Expiration

- ~~A. A site development permit application shall expire and have no further validity if:~~
- ~~1. No activity has occurred on a development application for a period of ninety (90) days from the date of City staff's last formal review comments on the development application, the development plans associated with the development application, or the resubmittal of such development application; or~~
 - ~~2. The approval of a development application has not been obtained within 180 days from the date the application and fees were filed pursuant to the requirements of this Chapter.~~
- ~~B. In the event that a development application expires pursuant to subsection A, immediately above:~~
- ~~1. The applicant shall be required to submit a new development application;~~
 - ~~2. The applicant shall be required to submit new application fees in an amount equal to the amount authorized by the Fee Schedule in effect at the time of submission of the new development application; and~~
 - ~~3. The project shall be subject to the regulatory provisions of this Chapter in effect as of the date of the submission of the new application.~~
- ~~C. All site development permits are valid for two years from the date the permit is issued.~~
- ~~D. A one time, 180 day extension may be requested through an application and approved administratively by the Planning Director if the site development permit remains valid under the existing codes and ordinances at the time of the request.~~
- ~~E. The Planning Director reserves the right to deny any extension request. If denied, an appeal may be made to the City Council, within thirty (30) days of such denial.~~
- ~~F. Any additional extensions will require City Council consideration. At no time may an extension request be granted for more than 180 days.~~

Section 3.18 PERMITS, PROJECTS, AND VESTED RIGHTS

3.18.1 *Vested Rights.* Texas Local Government Code Chapter 245 (LGC) – Issuance of Local Permits, commonly referred to as the State’s “Vested Rights Law”, provides an opportunity for landowners or developers to “grandfather” or “vest” government regulations that apply to development at the time of the filing of a permit application. The City has established in this section an administrative procedure for consideration of any claim of a vested right.

3.18.2 *Definitions.* The following words when used in this section shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

Official means the Planning Director or designee who administers the provisions of this section.

Permit shall have the meaning ascribed to it in Local Government Code § 245.001.

Project shall have the meaning ascribed to it in Local Government Code § 245.001.

3.18.3 Permit applications - expiration. Unless otherwise specified in this Code or the City's Code of Ordinances, all permit applications shall expire as stated herein. Any approved permit or authority to construct, build or execute any project pursuant to a permit or series of permits shall expire as follows:

- (1) A permit application or plan for development, filed on or after April 27, 2005, shall expire on the 45th day after said application or plan is filed, unless approved, if:
 - (A) The applicant fails to provide documents or other information necessary to comply with the city's technical requirements relating to the form and content of the application;
 - (B) The city provides written notice to the applicant of the failure not later than the 10th business day after the date the application is filed specifying the necessary documents or other information and the date the application will expire if the documents or other information are not provided; and,
 - (C) The applicant fails to provide the specified documents or other information within the time provided in the notice.
- (2) The Official may, but is not required to, extend the time only for issuance of a building permit to erect or improve a building or other structure, in which event the permit application shall expire when said extension expires. Any such extension shall be in writing and signed by the Official or their designee.

(d) Permits and projects - expiration.

- (1) Only a Project which was in progress (as defined by LGC Section 245.003 or any successor statute) or for which a completed Permit application was filed after September 1, 1997 may be eligible to claim vested rights; any Project for which the completed Permit application was filed prior to September 1, 1997, or has expired, is not eligible.
- (2) The following Permits (as well as other Permits satisfying the requirements of LGC Chapter 245), which include Plat Applications, and Plats, may be relied on by a property owner or developer to establish certain vested rights for a Project unless otherwise exempted by LGC 245.004 or its successor statute. A Project will expire in five (5) years from the date the first Permit application was filed for the Project with the City if progress, as defined in LGC Section 245.005 or its successor statute, has not been made towards completion of the Project. An expired Project is considered dormant, vested rights lapse and the Project must comply with current ordinances and requirements.

(A) Plat Applications

Vested rights under LGC Chapter 245 will be recognized for the Project that is

the subject of a completed application for a plat that has been filed with the City, provided all necessary fees have been paid.

(B) Plats

Vested rights under LGC Chapter 245 will be recognized for a Project associated with the property which is the subject of a plat that has been approved by the City Council or Official for the City provided that fair notice is provided with the plat application in accordance with LGC Chapter 245.

(C) Other Permits

For the purposes of determining whether any vested rights exist, any other Permit for which an expiration date is not specifically set forth in this Code of Ordinances or in other applicable law shall expire two (2) years after the date the application for the Permit was filed with the City if progress, as defined in LGC Section 245.005, has not been made towards completion of the Project.

(e) Administrative Procedure for Consideration of a Claim of Vested Rights.

Any property owner claiming vested rights under Chapter 245 of the LGC, or other applicable vesting law, shall submit a letter explaining in sufficient detail the basis upon which the property owner is claiming vesting and, consequently, is exempt from or not subject to a particular current regulation, ordinance, rule, expiration date, or other requirement. Such written submission shall include, at a minimum, the following:

- (1) The name, mailing address, telephone number and email address of the property owner (or the property owner's duly authorized agent);
- (2) Identification of the property, including the address (if it exists) and the plat reference (if it exists) or metes and bounds (if not platted), for which the property owner claims a vested right;
- (3) Provide Project name, type of Permit and date the Permit was filed;
- (4) If a property owner claims that certain regulations do not apply to the Project, the property owner must identify, with particularity, all requirements that the property owner claims do not apply; and
- (5) Attach all supporting documents, if any.

The letter should be addressed to the City of Pflugerville Vested Rights Official.

(f) Vested Rights Determination.

The Official will review the request and supporting documents and issue a final

administrative determination of whether a vested right exists in relation to the Project and shall identify in writing to the property owner all claims for which vested rights have been granted (the “Vested Rights Determination”).

(g) Appeal.

If the property owner believes that the Vested Rights Determination is in error, the property owner shall have the right to appeal such Vested Rights Determination to the City Council, which will have jurisdiction to hear and decide the appeal. The appeal provide for herein is a required condition precedent to any other appeal authorized by law.