

ORDINANCE NO. 213

AN ORDINANCE ESTABLISHING STANDARDS AND PROCEDURES FOR ASSERTION, ESTABLISHMENT, DETERMINATION, AND RECOGNITION OF POTENTIAL VESTED RIGHTS CLAIMS PURSUANT TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 245; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Annetta, Texas is a Type A general law municipality located in Parker County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, state law requires a property owner to comply with the regulations in effect at the time of the application for a permit unless the property owner is entitled to comply with regulations previously in effect; and

WHEREAS, state law recognizes that the owner of the property for which the application is submitted may be entitled to vested rights so that the permit application should be processed pursuant to regulations previously in effect; and

WHEREAS, the Town wishes to implement procedures for recognizing vested rights in projects which have accrued pursuant to Chapter 245 of the Texas Local Government Code; and

WHEREAS, the Town Council finds that the regulations adopted herein promote the health, safety, morals, and general welfare of the Town, and the safe, orderly, and healthful development of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ANNETTA TEXAS, THAT:

DIVISION 1. - PETITION SUBMITTAL AND REVIEW PROCEDURES

**SECTION 1.
Definitions.**

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Permit, project, and regulatory agency have the meanings assigned to them by V.T.C.A., Local Government Code ch. 245.

Petition means a vested rights petition that alleges rights under V.T.C.A., Local Government Code ch. 245 to develop property under ordinances, regulations, or rules other than those in effect on the date the permit application is submitted.

Town official means the mayor or his or her designee.

Vesting date means the date on which a project accrued development rights under V.T.C.A., Local Government Code ch. 245.

Vested rights means a right conferred by state law to develop property under ordinances, regulations, or rules other than those in effect on the date a permit application is submitted. The term includes development rights under V.T.C.A., Local Government Code ch. 245, but does not include a right existing under common law.

SECTION 2.

Purpose and applicability.

- (a) This ordinance establishes requirements for determining whether a project is entitled to vested rights under V.T.C.A., Local Government Code ch. 245. To the extent a project is entitled to vested rights, as determined under this ordinance, a permit necessary to initiate, continue, or complete the project may be exempt from current regulations.
- (b) The purpose of this ordinance is to:
 - (1) Establish a clear and consistent process for evaluating vested rights claims;
 - (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, if any, 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.

SECTION 3.

Vested rights petition required.

A petition for vested rights that meets the requirements of Section 4 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.

SECTION 4.
Contents of vested rights petition.

- (a) Except as provided in Subsection (b) of this section, a petition for vested rights required by Section 3 must be submitted on a form approved by the town official and must include, at a minimum, the following information:
- (1) Reference to one of the following applications, which must be submitted concurrently with the vested rights petition:
 - a. A permit application for development of the property; or
 - b. A plan for development, on a form provided by the town official, that establishes the nature of the permit sought, including the scope and intensity of proposed development and the type of land use, but need not include construction-level detail;
 - (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 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;
 - d. A list of all 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 town official, evidence regarding progress towards completion of the project under Section 9.
- (b) The town official may allow an applicant to omit information required under this section if, in the sole judgment of the town official, an application is associated with a project for which vested rights have been conclusively established by a court order or by a settlement agreement entered into with the town.

DIVISION 2. - VESTED RIGHTS DETERMINATIONS

SECTION 5.

Criteria for approval.

- (a) The town official shall review a petition for vested rights under the criteria described in this section.
 - (1) *General standard.* A permit application is entitled to development rights under V.T.C.A., Local Government Code ch. 245 if the permit is required to initiate, continue, or complete a project for which a prior application was submitted to the town. 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 section, the town official shall consider the following factors:
 - a. The nature and extent of proposed development shown on the prior permit or other application that initiated the project for which vested rights are claimed;
 - b. Whether the permit application submitted in connection with the vested rights petition is related to and consistent with the original project;
 - c. The nature and extent of prior development of the property, including any permitting or construction activity that occurred subsequent to the vesting date requested by the applicant;
 - d. Any prior vested rights determinations made for development of the property; and
 - e. Whether the project has expired in accordance with division 3 (expirations) of this ordinance or other applicable regulations.
- (b) The criteria in this section are intended to assist the town official in reviewing petitions for vested rights, but do not limit the town official from considering other factors relevant to the determination of rights for a particular project.

SECTION 6.

Vested rights determination.

- (a) Not later than ten business days after acceptance of a complete vested rights petition, the town official shall review the petition under Section 6 and render a determination consistent with the requirements of this section.
- (b) In acting on a petition, the town official 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 and ordinances of the town; or
 - (3) Approve the petition in part, as authorized by Subsection (c) of this section.
- (c) The town official 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 V.T.C.A., Local Government Code ch. 245.
- (d) The town official shall provide a written determination to the applicant, which must state:
- (1) Whether the petition is approved or denied, in whole or in part, and the basis for the decision;
 - (2) Findings of fact in support of the decision and information sufficient to identify the permit on which the petition is based; and
 - (3) If the petition is approved:
 - a. A description of the project for which vested rights are recognized; and
 - b. A vesting date.
- (e) Any applicant who is aggrieved by or believes that the town official's vested rights determination is in error shall have the right to appeal such determination to the town's board of adjustment in accordance with Section 2.2H of the town's zoning ordinance, as amended, which board shall have jurisdiction to hear and decide the appeal.
- (f) Should the town or the applicant be aggrieved by or dissatisfied with the actions of the board of adjustment, either the town or the applicant may pursue all legal remedies to review the decision.
- (g) The town official's final determination, if not timely appealed to the board of adjustment, shall be immediately filed in the town's files related to the project and the determination shall be considered binding upon the town and the applicant with respect to the project. Similarly, any decision by the board of adjustment, regarding a vested right claim, if not timely appealed, shall be filed in the town's files related to the project and the determination shall be considered binding upon the town and the applicant for the duration of the project. Notwithstanding the binding nature of the town official's final determination and any ruling by the board of adjustment, the town and the person may, at any time, enter into an agreement that, to the extent authorized by law, modifies the final determination and the applicable regulations to be applied to the project.

- (h) The board's decision shall be deemed filed in the board's office on the first business day following the date on which action was taken by the board.
- (i) A vested rights determination under this section does not affect the availability of a variance or other administrative remedy authorized by town ordinances, but requesting a variance is not required to exhaust administrative remedies for purposes of challenging a determination by the town official that a project is not entitled to vested rights.

SECTION 7.

Effect of vested rights determination.

If the town official or board of adjustment 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 (expirations) of this ordinance or other applicable regulations.

DIVISION 3. - EXPIRATIONS

SECTION 8.

Expiration requirements generally.

- (a) During the timeframes established under this division, a vested rights determination for a project approved under Section 6 applies to any permit application required to initiate, continue, or complete the project.
- (b) If all permits for a project expire, the project expires.
- (c) A permit application submitted after a project expires constitutes a new project and is subject to the current regulations and ordinances of the town.
- (d) The expiration of a project associated with a final plat does not affect the validity of a platted lot under the town's subdivision ordinance.

SECTION 9.

Dormant projects.

- (a) This section is adopted under V.T.C.A., Local Government Code § 245.005 to provide expiration dates for permits.
- (b) A permit issued prior to the effective date of this ordinance shall expire two years after January 21, 2021, unless the applicant submits evidence sufficient to show that progress towards completion of the project was made prior to that date under Subsection (f) of this section.
- (c) A project initiated prior to the effective date of this ordinance shall expire five years after January 21, 2021, unless the applicant submits evidence sufficient to show that progress

towards completion of the project was made prior to that date under Subsection (f) of this section.

- (d) A permit issued after the effective date of this ordinance shall expire two years after the date the permit application was filed unless the applicant submits evidence sufficient to show that progress towards completion of the project was made prior to that date under Subsection (f) of this section.
- (e) A project initiated after the effective date of this ordinance shall expire five years after the first permit application was filed for the project unless the applicant submits evidence sufficient to show that progress towards completion of the project was made prior to that date under Subsection (f) of this section.
- (f) 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.
- (g) Nothing in this Section 9 or this ordinance affects the provisions of section 1.16 of the town's subdivision ordinance.

SECTION 10.

This ordinance shall be cumulative of all provisions of ordinances of the Town of Annetta, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 11.

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the Town Council without the incorporation in this ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 12.

This ordinance shall be in full force and effect from and after its passage and publication as required by state law and it is so ordained.

PASSED AND APPROVED on this 21st day of January, 2021.

TOWN OF ANNETTA



Bruce Pinckard, Mayor

ATTEST:



Jamee Long, Town Secretary

