

ORDINANCE NO. 2024 -03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 78 "SUBDIVISIONS" OF ARTICLE II "ADMINISTRATION" TO ADD "SECTION 78-29. – VESTED RIGHTS" TO THE CITY CODE OF ORDINANCES; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 245 of the Texas Local Government Code applies to the issuance of local permits; and

WHEREAS, Texas Local Government Code Section 245.002(e) prescribed how a regulatory agency may provide for the expiration of permit applications under certain circumstances; and

WHEREAS, Texas Local Government Code Section 245.002(e) prescribed how a regulatory agency may require compliance with technical requirements relating to the form and content of an application in effect at the time the application was filed; and

WHEREAS, Texas Local Government Code Section 245.005 authorizes regulatory agencies to enact an expiration date on a permit and a dormancy date to a project, subject to certain conditions; and

WHEREAS, the City Council of the City of Montgomery, Texas, deems the adoption of this Ordinance is in the interest of public health, safety, and general welfare.

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

SECTION 1. The City Council adopts the findings and recitals above as true and correct.

SECTION 2. Article II "Administration" of Chapter 78 "Subdivisions" is hereby amended to add "Sec. 78-29. - Vested Rights." and to read as follows:

"Sec. 78-29. – Vested Rights.

(a.) *Recognition.*

(1) Law. Under state law, each application for permit or plat approval shall be processed pursuant to the regulations in effect at the time of the application unless the applicant has applied for and obtained a letter of recognition of vested rights for the permit or project for which the permit is sought.

(2) Purpose. The purpose of a vested rights recognition application is to determine the regulations by which an application for approval of a permit or plat is to be processed.

(3) Definitions. The following terms shall have the meanings hereinafter ascribed to them:

Chapter 245. Chapter 245 of the Texas Local Government Code, as may be amended.

Permit. Has the meaning set forth in Texas Local Government Code chapter 245, as may be amended.

Progress. Has the meaning set forth in Texas Local Government Code chapter 245, as may be amended.

Project. Has the meaning set forth in Texas Local Government Code chapter 245, as may be amended.

Vested right. The right of a person to develop a project that complies only with ordinances and other development regulations in effect on the date a plan for development or the first application for the project was filed with the City.

(4) Applicability. An owner of property, or the owner's authorized agent, may submit an application for recognition of vested rights for the property:

- i. With an application for approval of a plat, zoning change, building permit or any other permit; or
- ii. To prevent expiration of a plat.

(5) Effect. If recognition of vested rights is issued in whole or in part, the city administrator or his/her designee shall issue a letter which shall specify the regulations which apply to an application and the application shall be processed in accordance with the regulations specified in the letter. If the application for recognition is to prevent expiration of an approved plat, the plat otherwise subject to expiration shall be extended as provided in the letter.

(6) Types of vested rights. A person may claim vested rights under common law, a federal or state statute, the state or federal constitution, or chapter 245. For vested rights claimed under chapter 245, the definition of "permit" in chapter 245 shall apply to applications submitted pursuant to this article.

(7) Exemptions. This article shall not apply to the types of ordinances or other governmental actions enumerated in Texas Local Government Code section 245.004 regardless of the effective date of the ordinance or the existence of vested rights for a project.

(8) Duration. This article and any letter of recognition issued hereunder shall not extend the time of validity for any permit or project. Any rights recognized by a letter issued pursuant to this article shall not extend beyond the expiration date prescribed by ordinance for the permit(s) submitted for recognition.

(b.) Requirements for application.

(1) Who may apply. A property owner or the owner's authorized agent may submit an application for recognition of vested rights with an application for approval of a plat or building permit, or at any time for a plat prior to its expiration date established by the subdivision ordinance.

(2) Fee. The applicant shall submit a completed application together with a permit application review fee in the amount of dollars (\$500) or such fee as subsequently determined by ordinance or resolution of the City Council, and three (3) copies of any documents on which the applicant is relying to establish vested rights.

(3) Form of application. The application shall state that the applicant has a vested right for some or all of the land for which the permit is sought under chapter 245 or another statute, or other state or federal law that requires the City to review and decide the application under regulations in effect prior to the effective date of the currently applicable regulations. The application shall include the following:

- i. The name, mailing address, phone number and fax number of the applicant;
- ii. The name, mailing address, phone number and fax number of the property owner, if different than the applicant;
- iii. Identification of the property for which the applicant claims a vested right, including a legal description of the exact boundaries of the property encompassed by the project;
- iv. A description of the project for which the application is submitted, how the project was commenced, and the date of commencement of the project;
- v. Layout of the site, including locations of buildings, streets, utilities and drainage facilities;
- vi. Identification of the original application for the first permit in the series of permits required for the project, as described in Local Government Code section 245.001(1) and section 245.002(a) and (b), as may be amended;
- vii. The date that the first permit in the series of permits required for the project was filed with the City;
- viii. Identification of the regulations which the applicant contends apply to the project and the specific parts of the project which are subject to vesting;
- ix. A copy of any prior recognition of vested rights by the City involving the same land; and
- x. If the applicant alleges that a plat subject to expiration under a City ordinance should not be terminated, a description of the events, including any plat or other development applications on file that should prevent termination.

(4) An application for recognition of vested rights shall not be considered to have been filed with the City until such time as the application is administratively complete. To be administratively complete, the application must meet the following requirements:

- i. Contain all materials and information required by this article; and
- ii. Be accompanied by a check payable to the City for the application review fee.

(5) No letter of recognition of vested rights shall be issued unless the applicant has demonstrated compliance with the following criteria, as applicable:

- i. For statutory vested rights:
 - A. The applicant filed an application for a permit as provided in Chapter 245 prior to adoption of the regulations against which vested rights are claimed; and
 - B. The regulations against which vested rights are claimed are not subject to an exemption as provided in Local Government Code section 245.004; and
 - C. The project has not become dormant as defined in Texas Local Government Code section 245.005; and/or
- ii. For recognition of vested rights under common law or the federal or state constitution, applicant is in compliance with any other factor which may be required to establish vested rights under the state or federal constitution.

(c.) Processing of application.

(1) Review and determination. The city administrator or his/her designee may require the submission of additional evidence relevant to support the applicant's claim for recognition. The City shall process the application and forward a copy of the application to the City attorney following acceptance. Upon review of the application and evidence, the city administrator or his/her designee shall make a determination as to whether the applicant is entitled, in whole or in part, to recognition of vested rights for a permit. If the evidence presented by the applicant establishes that the permit for which approval is sought is part of a project which is vested under chapter 245, the city administrator or his/her designee shall issue a letter of recognition of such rights. If the city administrator or his/her designee finds that the applicant is not entitled to recognition of vested rights, he shall notify the applicant of the basis for his findings.

(2) Substantial change. A substantial change to a project denies the City, and the public, of fair notice. Where the city administrator or his/her designee determines that the project for which the applicant seeks vested rights has undergone a substantial change since its inception, recognition of vested rights shall be denied.

Examples of substantial change include, but are not limited to, modifications of the following characteristics of a project:

- i. Gross surface area or acreage;
- ii. Gross floor area;
- iii. Gross number of buildings;
- iv. Density;
- v. Living unit equivalents;
- vi. Land use classification;
- vii. Impervious cover;
- viii. Drainage pattern or volumes;
- ix. Street layouts;
- x. Additional curb cuts or driveways; or
- xi. Orientation of buildings.

(d.) Appeal.

(1) Who may appeal. The applicant may appeal the decision on the application for vested rights determination to the City Council. An appeal under this section stays acceptance by filing of any related development applications.

(2) Process. The application for appeal shall be made in writing to the City secretary and shall state the basis for requesting the appeal. The appeal shall be made within ten (10) days of the date of the letter. The City secretary shall schedule a hearing before the City Council within thirty (30) days of the date the appeal is submitted.

(3) Appeal of council decision. A person dissatisfied with the decision of the City Council may appeal the decision to a court within the county in which the property is located. The person shall file the appeal with the court within thirty (30) days of the decision of the City Council. If no appeal is filed, the decision of the City Council shall be final.

(e.) Expirations.

(1) A permit issued by the City that is subject to chapter 245, but does not expressly contain an expiration date, shall expire by operation of law two years after issuance. This subsection shall not apply to permits pursuant to which progress has been made toward the completion of the project, as determined by Local Government Code section 245.005(c), as may be amended.

(2) A project subject to chapter 245 shall expire by operation of law five years after an application was filed for the first permit necessary for the project. This subsection shall not apply to permits for which progress has been made toward the completion of the project.

Secs. 78-30 – 78-60. - Reserved."

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect any of the remaining provisions of this Ordinance.

SECTION 4. All other ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this Ordinance on all ordinances or sections of the City Code not specifically amended or repealed shall remain in full force and effect.

SECTION 5. It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, of the Texas Government Code.

SECTION 6. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED AND APPROVED by the City Council of the City of Montgomery, Texas on the 12th day of March, 2024.

CITY OF MONTGOMERY, TEXAS


Byron Sanford, Mayor

ATTEST:


Nicola Browe, City Secretary

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney