

2015 APR 15 AM 9:50

ORDINANCE NO. 018349

AN ORDINANCE AMENDING TITLE 20 (ZONING), CHAPTER 20.10 (SUPPLEMENTAL USE REGULATIONS), TO AMEND SECTION 20.10.695, TRANSFER OF DEVELOPMENT RIGHTS, BY AMENDING THE SECTION TO ALLOW A SECOND TYPE OF TRANSFER OF DEVELOPMENT RIGHTS FOR THE TRANSFER OF A VESTED PROJECT FROM ONE PARCEL OF LAND TO ANOTHER; PROVIDING FOR CONDITIONS APPLICABLE TO SUCH APPROVAL; AMENDING SECTION 20.08.030 (PERMISSIBLE USES) APPENDIX "A" TABLE OF PERMISSIBLE USES TO ALLOW THE TRANSFER OF DEVELOPMENT RIGHTS IN THE M-1 ZONING DISTRICT. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

WHEREAS, Title 20 (Zoning) of the El Paso City Code was adopted to promote the health, safety, morals, and general welfare of the community; and,

WHEREAS, Texas Local Government Code Chapter 245 Issuance of Local Permits, establishes the rights to which a permit applicant is entitled to 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; and

WHEREAS, El Paso City Code Section 1.04.070 Vesting of Projects, establishes a process and procedure for issuance of local permits for projects in accordance with the provisions of Texas Local Government Code Chapter 245; and

WHEREAS, the proposed amendment will allow projects which are vested in accordance with these provisions to transfer their development rights to other properties in certain zoning districts provided various criteria are met; and,

WHEREAS, a public hearing regarding the proposed amendment was held before the City Plan Commission, and the Commission recommended approval of the amendment; and,

WHEREAS, the El Paso City Council has determined that this amendment is in the best interest of the public and will promote the public health, safety, and welfare of the City;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 20 Zoning, Section 20.10.695, Transfer of Development Rights, by amending Section A. Purpose, Subsections 1, 3, and 4 only as follows:

A. Purpose.

ORDINANCE NO. 018349

1. In order to provide regulatory incentives to permanently restrict urbanization of certain environmentally sensitive areas, or to allow certain vested projects to be relocated to another appropriate location, this section establishes two types of transfer of development rights. In all cases, the transfer of development rights from sending to receiving parcels shall be at the voluntary request and requires a special permit application of the landowners of both parcels.
  - a. Environmentally sensitive areas. A special permit for transfer of development rights (TDR) shall be permitted when approved by the El Paso City Council pursuant to the provisions of this section.
  - b. Vested projects. When a determination as to project vesting has been made pursuant to Section 1.04.070 of this Code, a property owner may be allowed to relocate that project to another appropriate parcel of land, when approved by the El Paso City Council pursuant to the provisions of this section.
  
3. This section establishes procedures for transferring development rights from sending to receiving parcels, to allow for increased densities in the receiving parcels and reduced densities in the sending parcels, for environmentally sensitive lands, and to allow for the transfer and development of vested projects on land appropriate for such uses.
  
4. The TDR system for environmentally sensitive lands is based on the theory of carrying capacity. In other words, a finite amount of development is permitted in the areas within the sending and receiving parcels. A transfer of development rights does not increase the cumulative density possible in the sending and receiving parcels. The TDR for vested projects is based on the theory that certain projects may have become vested in their development plans, but may be more appropriately located on different property than that for which the initial permit was received.

**Section 2.** That Title 20 Zoning, Section 20.10.695, Transfer of Development Rights, by amending Section B. Sending Parcels as follows:

**B. Sending Parcels.**

1. Environmentally sensitive lands: Property proposed as a sending parcel may be located in any zoning district within the El Paso city limits and shall meet all of the following criteria:
  - a. The property proposed as a sending parcel is within an area designated as environmentally sensitive as described in subsection (A)(2);
  - b. One hundred percent of the development potential of the sending parcel shall be transferred. For purposes of this subsection, "development potential" means the density permitted by the underlying zoning district of the sending parcel;

**ORDINANCE NO.** 018349

- c. The property is physically and legally developable at the potential of the underlying zoning district, as certified by a registered professional engineer;
  - d. All of the property in the proposed sending parcel is protected through recording of a conservation easement or otherwise restricted from any future development;
  - e. Documentation of compliance with the requirements for eligibility as a sending parcel shall be submitted with the application for a special permit requesting a transfer of development right from the sending parcel and an increase in density in the receiving parcel.
2. Vested Projects. Property proposed as a sending parcel may be located in any zoning district within the El Paso city limits and shall meet all of the following criteria:
- a. The project has requested and received a letter of vested rights determination;
  - b. The vested project is an allowed use within the zoning district on which the receiving parcel is located, or would have been allowed under the ordinances in effect at the time of issuance of the vested determination letter;
  - c. The vested project as planned, developed, and depicted on applications for all permits, for the receiving parcel substantially conforms to the project for which the vested rights determination letter was granted. Consideration will be given for changes in plans necessitated by the topography or other features of the receiving parcel;
  - d. Documentation of compliance with the requirements for eligibility as sending and receiving parcels shall be submitted with the application for a special permit.
  - e. Exemption from special permit. A Vested Project will not be required to secure approval of a special permit in accordance with this Section, under the following conditions:
    - (1) The requestor holds a valid determination of project vesting under Section 1.04.070 of this Code; and
    - (2) The City has a real property interest in the sending or receiving parcel; and
    - (3) Council has determined the following as part of the real property transaction:
      - (a) That the proposed use being transferred from the sending parcel to the receiving parcel, is identified as the Project in the determination of project vesting; and
      - (b) That the proposed use is an appropriate land use on the receiving parcel and is in conformance with the Plan for El Paso; and

**ORDINANCE NO. 018349**

- (c) That the transfer of land and proposed use of the land is in the best interests of the public health, safety and welfare.
- (d) The findings as to the receiving parcel listed above, and the identification of the sending parcel, removing the vested project status, shall be memorialized in a document, approved by the City Attorney and signed by the City Manager, that may be recorded in the county deed records.

Further, a determination of project vesting includes an exemption from special permit requirements if the zoning in place at the time of the first permit application, which resulted in a determination of project vesting, did not require a special permit.

**Section 3.** That Title 20 Zoning, Section 20.10.695, Transfer of Development Rights, by amending Section C. Receiving Parcels Designated as follows:

C. Receiving Parcel Designation.

1. A parcel of land which receives a special permit for development rights to allow increased density pursuant to this section shall be referred to as a “receiving parcel.”
2. No development rights shall be transferred to any parcel of land that is not located in a receiving district and so designated in the ordinance approving the special permit, or unless the receiving parcel is exempt under Section B.2.e.
3. Environmentally sensitive land: Only property zoned S-D (Special Development), U-P (Union Plaza), PR-I Planned Residential I), PR-II (Planned Residential II), RMU (Residential Mixed Use), and GMU (General Mixed Use) may be designated as receiving districts for purposes of transferring severable development rights from environmentally sensitive lands.
4. Vested Projects: Property in any commercial or the M-1 manufacturing districts may be designated as receiving parcels for transferring development rights and standards in vested projects, subject to City Council review of the special permit, or unless the receiving parcel is exempt under Section B.2.e.
5. The development rights attach to the receiving parcel upon approval of the special permit, if required, or upon the date of closing of the sale or transfer of property if the receiving parcel is exempt under B.2.e., and upon recordation of a conservation easement or other documentation restricting the development of the sending parcel for environmentally sensitive lands, and

**ORDINANCE NO. 018349**

the inclusion of site plans and other documentation required for vested projects, if required for a special permit, and shall not be subsequently transferred to another property.

**Section 4.** That Title 20 Zoning, Section 20.10.695, Transfer of Development Rights, by amending Section D. Special Permit Required, Subsection 3 only, and adding Subsection 4 as follows:

D. Special Permit Required.

3. The effective date of the ordinance will be upon the recordation of a conservation easement or other documentation restricting any future development for environmentally sensitive lands, and the inclusion of site plans and other documentation required for vested projects, on the receiving parcel, if a special permit is required.
4. The city council may impose additional conditions on any TDR special permit as deemed necessary to protect the public health, safety and welfare.

**Section 5.** That Title 20 Zoning, Section 20.10.695, Transfer of Development Rights, by amending Section E. Evidence of Restriction Required for Development Approval and adding Section F, as follows:

E. Evidence of Restriction Required for Development Approval for Environmentally Sensitive TDRs.

F. Restrictions for Development Approval for Vested Projects.

As of the effective date of the ordinance for TDR for a vested project, the project at the receiving parcel may be completed in accordance with the regulations that were in effect as of the date of the vested rights determination. Any rights to such regulatory applicability in the sending parcel will terminate as of the effective date.

**Section 6.** That Title 20 Zoning, Section 20.08.030 Permissible Uses, Subsection C. Table of Permissible Uses. Appendix A, be amended as follows:

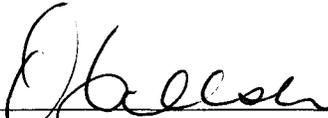
The Transfer of Development Rights be permitted by special permit with an "S" designation in the M-1 zoning district.

**Section 7.** Except as herein amended, Title 20, Zoning of the El Paso City Code shall remain in full force and effect.

ADOPTED this 28<sup>th</sup> day of April, 2015

ORDINANCE NO. 018349

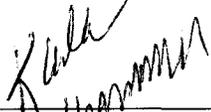
CITY OF EL PASO

  
\_\_\_\_\_  
Oscar Leeser, Mayor

ATTEST:

  
\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Karla M. Nieman  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
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Mathew S. McElroy, Director  
Planning & Inspections Department

CITY CLERK DEPT.  
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ORDINANCE NO. 018349