

ORDINANCE 2014-48

Ordinance 2014-48, Amending the Zoning Ordinance to Add a New Section 1.7.4, to be Entitled "Amendment to Development Plans"; to Remove 2.4.2 (12), Entitled "Time Limit" and Replace with a New Section 2.4.2 (12), Entitled "Vesting Rights for Development Plans, Preliminary Subdivision Plats, Site Plans, Final Subdivision Plats, Infrastructure Construction Plan, and other Land Use Approvals After January 1, 2015"; to Remove 2.4.3 (7), Entitled "Time Limit" and Replace with Reference to 2.4.2 (12); and to Add Definitions to Section 8.3, Entitled "Definitions and Use Classifications Related to the Language Contained in the State of Tennessee Property Vesting Rights Acts of 2014."

Whereas, the City of Franklin, Tennessee adopted a Zoning Ordinance on July 1, 2008, and;

Whereas, the Zoning Ordinance contained requirements and time limits for Planned Unit Developments and Site Plans to remain in effect after approval and;

Whereas, the City of Franklin has adopted Subdivision Regulations and other Development Standards that contain Time Limits for milestones prior to expiration;

Whereas, the State of Tennessee has enacted the vested Property Rights Act of 2014 codified at TCA 13-4-310 and 13-3-413 providing state wide standards under which vesting periods are to commence upon the approval of new development plans after January 1, 2015;

Whereas, the vesting periods prescribed by the Act and the current City of Franklin vesting time limits differ;

Whereas, the nomenclature between the current City of Franklin Development definitions and the language in the Act differ;

Whereas, the City of Franklin wishes to codify the provisions of the State regulations in the Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMAN OF FRANKLIN, TENNESSEE, AS FOLLOWS:

Section 1. That Chapter 1, Section 1.7.4 of the Franklin Zoning Ordinance is hereby added to read as follows:

Revisions to Projects Approved After January 1, 2015

- (1) Revisions or Amendments to Development Plans, Site Plans, Preliminary Plats, Final Plats, and other Land Development Plans covered by the Tennessee Vesting Legislation of 2014 approved after the effective date of the Act on January 1, 2015, will be vested per the State Act. Amendments will be reviewed per the regulations. The Project will be vested in the Zoning Ordinance and Development Standards in Place at the time of approval.
- (2) A Preliminary Development Plan does not include outlines, sketches, ideas, concepts, pre-application plans, Development Plans, or other Plans submitted as part of an application but not approved, or any Development Plan, Site Plan, Preliminary Plat or Final Plat only conditionally approved until approval is finalized.
- (3) Exceptions
 - (a) Consent is obtained from the applicant or owner;
 - (b) It is determined, in writing, that a compelling, countervailing interest exists relating specifically to the development plan or property which is the subject of the building permit that seriously threatens the public health, safety or welfare of the community and the treat cannot be mitigated within a reasonable period of time, as specified in writing by the City, by the applicant using vested property rights;
 - (c) The existence of a natural or man-made hazard on or in the immediate vicinity of the subject property, not identified in the development plan or building permit, and which hazard, if uncorrected, would pose a serious threat to the public health, safety, or welfare and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the City, by the applicant using vested property rights;
 - (d) A development standard is required by federal or state law, rule regulation, policy, corrective action, order of other type of governance that is required to be enforced by the City, regardless of nomenclature; or
 - (e) The City is undertaking or initiated or measure instituted in order to comply with a newly enacted federal or state law, rule, regulation, policy, corrective action, permit, order or other type of governance, regardless of nomenclature.

Section 2. That Chapter 2, Section 2.4.2 (12) of the Franklin Zoning Ordinance is hereby amended to delete the following text noted with a ~~striketrough~~; to add the following text noted in **bold**, and is approved to read as follows:

~~(12) PUDs Approved Between July 1, 2008 and January 10, 2012~~

~~For any PUD Concept Plan or Regulating Plan approved between July 1, 2008 and January 10, 2012, the following review procedure shall apply:~~

- ~~(a) Concept Plans that are to be amended or revised shall follow the process and procedure, as described in Subsection 2.4.2(11) (a), above.~~
- ~~(b) Concept Plans which do not have approved Regulating Plans for all Sections or Phases within the PUD which have Sectioned or Phased Regulating Plans shall follow the process and procedure as described in Subsection 2.4.2(11)(b), above for approval of those unapproved sections or phases.~~
- ~~(c) Concept Plans that have not submitted any Regulating Plans for a PUD shall follow the process and procedure as described in Subsection 2.4.2(11)(b), above.~~

(12) Time Limit (Vesting Period) for PUD's approved After January 1, 2015

The following section provides the frameworks for the vesting of property rights per the State mandate. The time limit for approval and vesting rights for a Development Plan is three years, provided the applicant obtains Site Plan approval, secures permits and commences Site Preparations.

- (a) The vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the City's approval of the development plan, provided the applicant obtains the City's approval of a site plan, secures any necessary permits and commences site preparation within the vesting period. If the applicant obtains approval of a site plan, plat if required, secures any necessary permits, and commences site preparation within the vesting period, then the vesting period shall be extended an additional two (2) years to commence construction from the date of the expiration of the three-year period. During the two-year period, the applicant shall commence construction and maintain any necessary permits to remain vested.**
- (b) If construction commences during the vesting period, the development standards applicable during the vesting period shall remain in effect until the City has certified final completion of the development or project; provided, the total vesting period for the project shall not exceed ten (10) years from the date of the approval of the Development Plan unless the City grants an extension pursuant to an ordinance or resolution; provided**

further, that the applicant maintains any necessary permits during the ten-year period.

- (c) In the case of developments which proceed in two (2) or more sections or phases as described in the development plan, there shall be a separate vesting period applicable to each section or phase. The development standards which are in effect on the date of approval of the preliminary development plan for the first section or phase of the development shall remain the development standards applicable to all subsequent sections or phases of the development; provided, the total vesting period for all phases shall not exceed fifteen (15) years from the date of the approval of the preliminary development plan for the first section or phase unless the City grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the fifteen-year period.

Exceptions

During the vesting period described in sections above, the adopted development standards which are in effect on the date of approval of a development plan, preliminary plat or the issuance of a building permit, whichever applies, shall remain the development standards applicable to the property described in such development plan, preliminary plat, or permit, except such rights shall terminate upon a written determination by the City under the following:

- (a) When the applicant violates the terms and conditions specified in the approved development plan or building permit; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
- (b) When the applicant violates any of the terms and conditions specified in the local ordinance or resolution; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the City, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
- (c) Upon finding by the City that the applicant intentionally supplied inaccurate information or knowingly made misrepresentation material to the issuance of a building permit or the approval of a development plan or intentionally and knowingly did not construct the development in accordance with the issued

building permit or the approved development plan or an approved amendment for the building permit or the development plan; or

- (d) Upon the enactment or promulgation of a state or federal law, regulation rule, policy, correction action or other governance, regardless of nomenclature, that is required to be enforced by the City and that precludes development as contemplated in the approved development plan or building permit, unless modification to the development plan or building permit can be made by the applicant, within ninety (90) days of notification of the new requirement, which will allow the applicant to comply with the new requirement.

- (3) A written determination by the City of the occurrence of any of the circumstances provided in the Section 2.4.2 (12) exceptions shall cause the vested property rights to terminate; provided, however, the City may allow a property right to remain vested despite such a determined occurrence when a written determination is made that such continuation is in the best interest of the community.

Section 3. That Chapter 2, Section 2.4.3 (7) of the Franklin Zoning Ordinance is hereby amended to delete the following text noted with a ~~striketrough~~; to add the following text noted in **bold**, and is approved to read as follows:

~~(7)~~

Time Limit

- ~~(a) Unless otherwise specified in the Site Plan approval, an application for a Building Permit shall be applied for and approved within one year of the date of the Site Plan approval, otherwise the Site Plan shall become invalid. Permitted timeframes do not change with successive owners.~~
- ~~(b) Upon written request, two site plan extensions may be granted. The first site plan extension may be granted by the original approving body, if the applicant can show good cause. A second site plan extension may only be granted by the Planning Commission, if the applicant can show good cause. Each site plan extension request is for six months. The two requests shall not be submitted or granted simultaneously. A site plan extension shall be requested prior to the original expiration date or the expiration of the first extension. All dates are calculated from the original approval date. All site plan extensions shall adhere to the provisions of Section 2.4.3(7).~~
- ~~(c) For Residential Site Plans that do not have an approved Building Permit within one year of the date of the Residential Site Plan approval, a Grading and Stormwater permit shall be approved and construction of streets, water, sewer, sidewalk, utilities, and/or other infrastructure shall have commenced within one year of the date of the Residential Site Plan approval, otherwise the approval shall become invalid. Land preparation itself, such as clearing,~~

~~grading, and filling, is not a sufficient level of construction activity to keep the site plan approval from expiring.~~

**(7) Site Plan Time Limits for Projects Approved After
January 1, 2015**

Refer to Time Limit Established in Chapter 2, Section 2.4.2 (12)

Section 4. That Chapter 8, Section 8.3 entitled Definitions and Use Classifications of the Zoning Ordinance is hereby amended to add definitions from T.C.A Sections 13-4-310 and Sections T.C.A. 13-3-413, Vesting Rights Act of 2014.

STATE OF TENNESSEE VESTING RIGHTS DEFINITIONS

- (1) “Applicant” means a landowner or developer who is responsible for filing with the local government an application for a building permit, a development plan or application for a permit requisite to a development plan, or the representatives, assigns, successors, transferees, heirs or agents of such landowner or developer.**
- (2) “Construction” means the erection of construction materials in a permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition or removal shall be deemed to be construction; provided, that work shall be carried on diligently and complies with all applicable requirements.**
- (3) “Development Plan” means both a preliminary development plan and a final development plan.**
- (4) “Preliminary Development Plan” means a plan which has been submitted by an applicant and that depicts a single-phased or multi-phased planned development typically used to facilitate initial public feedback and secure preliminary approvals from local governments. Examples of information found on development plans include proposed land uses, density and intensity of development, public utilities, road networks, general location of off-street parking, building location number of buildable lots, emergency access, open space, and other environmentally sensitive areas such as lakes, streams, hillsides, and view sheds. An approved preliminary development plan serves as a guide for all future improvements within defined boundaries.**

Preliminary Development Plans are considered PUD Development Plans and Preliminary Plats for the purposes of City of Franklin approvals.

(5) “Final Development Plan” means a plan which has been submitted by an applicant and approved by a local government describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals:

- (i) A planned unit development;**
- (ii) A subdivision plat;**
- (iii) General development plan;**
- (iv) Subdivision infrastructure construction plan;**

Final Development Plans are considered Site Plans and Final Plats for the purposes of City of Franklin approvals.

(6) “Site Preparation” means excavating, grading, demolition, removing excess debris to allow for proper grading, or providing a surface for a proper foundation, drainage, and settling for a development project, and physical improvements including, but not limited to water and sanitary sewer lines, footings, or foundations installed on the site for which construction permits are required.

(7) “Development Standards” means all locally adopted or enforced standards, regulations or guidelines applicable to the development of property, including, but not limited to, planning; local storm water requirements, layout, design; local construction standards for buildings, streets, alleys, curbs, sidewalks; zoning as provided for in subsection (g) lot size; lot configuration; yard dimensions; and off-site improvements, including public or private infrastructure, in which an applicant may acquire vested rights or vested property rights according to this section; and

Does not include standards required by federal or state law; or building construction safety standards which are adopted pursuant to authority granted under 68-120-101;

Section 5. That this Ordinance shall take effect on January 1, 2015, from and after its passage on Third and Final Reading; the health, safety and welfare of the citizens of the City of Franklin requiring it.

ATTESTED:

CITY OF FRANKLIN, TENNESSEE

BY: _____

ERIC S. STUCKEY
City Administrator

BY: _____

DR. KEN MOORE
Mayor

PASSED FIRST READING
PUBLIC HEARING
PASSED SECOND HEARING
PASSED THIRD HEARING

Shauna R. Billingsley
City Attorney