

ORDINANCE 2016-005

TO BE ENTITLED: “AN ORDINANCE TO AMEND VARIOUS CHAPTERS OF THE CITY OF FRANKLIN, TENNESSEE, ZONING ORDINANCE PERTAINING TO THE APPROVAL OF DEVELOPMENT PLANS, SITE PLANS AND VESTED PROPERTY RIGHTS.”

WHEREAS, various provisions of the City of Franklin Zoning Ordinance pertain to the process for obtaining approval for the development of property and the period for which such approval is valid; and

WHEREAS, the Tennessee General Assembly has enacted the Vested Property Rights Act of 2014 (the “Act”), which establishes statewide standards under which “vesting periods” are commenced upon the approval of certain types of new Preliminary Development Plans and Final Development Plans (“Development Plans”); and

WHEREAS, during the vesting periods established under the Act, local governments may not apply development standards other than those in effect at the time of approval of the Development Plan, except as permitted by the Act; and

WHEREAS, the Act took effect January 1, 2015, and provided that local governments may pass an Ordinance or Resolution to identify the types of Development Plans that will cause property rights to vest, including the actions that constitute approval of such Development Plans; and

WHEREAS, the revisions to the City of Franklin Zoning Ordinance herein are intended to implement the requirements of the Act in regard to the different types of Development Plans approved by the City of Franklin; and

WHEREAS, this text amendment is in the best interest of the citizens of Franklin.

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

SECTION I: That Chapter 1, Section 1.8, Subsection 1.8.5 of the Franklin Zoning Ordinance is hereby created with the following language to be approved to read as follows:

1.8.5 Vested Property Rights

In accordance with T.C.A. § 13-4-310, the following is the list of the specific types of plans approved, on or after January 1, 2015, that will cause a vested property right to be established, and such action shall constitute final approval of the listed plans:

- (1) Preliminary Development Plans
 - (a) Approval by the BOMA of PUD Development Plan as required by Subsection 2.4.2;
 - (b) Approval by the FMPC of a Preliminary Plat, when not part of a PUD Development Plan, as required by the Franklin Subdivision Regulations; or
 - (c) Approval by the BOMA of a Special Permit as required by Subsection 4.4.
- (2) Final Development Plans
 - (a) Approval by the FMPC, or administratively by staff, of a Site Plan as required by Subsection 2.4.3, when not part of a Preliminary Development Plan as specified in Subsection 1.8.5(1), or
 - (b) Approval by the FMPC, or Administratively by Staff, of a Final Plat as required by the Franklin Subdivision Regulations, when not part of a Preliminary Development Plan as specified in Subsection 1.8.5(1).

SECTION II: That Chapter 2, Section 2.4, Subsection 2.4.2(6)(h)(iv) of the Franklin Zoning Ordinance is hereby amended to delete the following text noted with a ~~strike through~~; to add the following text noted in **bold**, and is approved to read as follows:

- (iv) ~~Upon approval of the resolution,~~ The PUD Development Plan shall be considered to be approved **on the effective date of the resolution**. A majority vote of the full membership of the BOMA shall be required to pass the decision and resolution regarding the Development Plan.

SECTION III: That Chapter 2, Section 2.4, Subsection 2.4.2(11) of the Franklin Zoning Ordinance is hereby amended to delete the following text noted with a ~~strike through~~; to add the following text noted in **bold**, and is approved to read as follows:

- (11) Amendments for Revisions to an Approved PUD **Development Plan**, Concept Plan or Regulating Plan — ~~January 1, 2000 to December 31, 2014~~

The following subsections provide the framework, **process, and reviewing entity** for revisions or amendments to **approved** Concept Plans, Regulating Plans, or Development Plans. The review process, which applies to the proposed revision, depends upon the elements of the plan proposed for revision. ~~The below sections define the process and the reviewing entity for different types of revisions.~~

~~(A)~~ **(a) Board of Mayor and Aldermen (BOMA) and Franklin Municipal Planning Commission (FMPC) Review**

The items below are considered deviations from ~~the~~ **an approved** Development Plan, Concept Plan or Regulating Plan and require approval of a revised Development Plan by the FMPC and the BOMA, according to the procedure described in 2.4.2(6). The Development Plan shall be approved before the Site Plan is accepted for review.

- ~~I.~~ **(i)** Any increase in entitlements, including the number of dwelling units for residential projects and square footage for non-residential or either for mixed use projects.
- ~~II.~~ **(ii)** Changes or increase from detached to attached dwelling unit(s).
- ~~III.~~ **(iii)** Changes in non-residential square footage related to the institutional and/or industrial use.
- ~~IV.~~ **(iv)** A change in the number and/or location of external access points, or streets classified as collector or arterial roadways.
- ~~V.~~ **(v)** Revisions to the widths or lengths of provided buffers (historic, incompatible use, incompatible lot size, stormwater, etc.).
- ~~VI.~~ **(vi)** Any revision to a condition required by the BOMA.
- ~~VII.~~ **(vii)** Any revision that requires a Modification of Standards (MOS) or that requires a change to an MOS previously approved.

~~(B)~~ **(b) FMPC Review**

The items below are considered deviations from ~~the~~ **an approved** Development Plan, Concept Plan or Regulating Plan and require approval of a revised Development Plan by the FMPC. The Development Plan shall be approved before the Site Plan is accepted for review.

- ~~I.~~ **(i)** Changes to setbacks approved as part of the Development Plan, which change the character of the project.
- ~~II.~~ **(ii)** Major changes to typical lots in either dimension and/or number of lots revised in a section or throughout the development.

- ~~III.~~ (iii) Reduction in approved open space within a section of the plan, which impacts the plan.
- ~~IV.~~ (iv) Changes in building heights, or number of stories, which impact the visual character or transitional features of the section or plan.
- ~~V.~~ (v) Significant changes to the internal street network, block layout, and/or intersection configuration, such as the elimination of streets or connection points, or any reduction to the connectivity index.
- ~~VI.~~ (vi) Any impact to existing historic sites or structures, other than impacts previously approved.
- ~~VII.~~ (vii) Major changes to parking layout, which adversely alters parking convenience or changes the character of the plan.
- ~~VIII.~~ (viii) Substantial revision to drainage, streets, stormwater quality or quantity or other engineering design changes that alter those items as approved in the Development Plan, including significant changes in traffic circulation.

~~(C)~~ (c) **Staff Review**

Items not meeting the criteria of Subsections 2.4.2 (11) (a) and (b) **are considered minor revisions and have minimal impact upon the project and may be approved by the Planning Director or his/her designee** ~~may be addressed according to the provisions of this subsection related to staff review. These items are considered minor in nature and have minimal impact upon the project.~~ For staff review, the revised Development Plan shall be submitted simultaneously with a revised Site Plan for staff approval.

The Planning Director or his/her designee may at his/her discretion choose to forward any revised Development Plan to the BOMA, the FMPC or the ~~Department Review Team (DRT)~~ for review, comment and approval. Should the Planning Director or his/her designee require the revised Development Plan be considered by **the** FMPC and/or the BOMA, the submittal requirements for those entities shall apply.

SECTION IV: That Chapter 2, Section 2.4, Subsection 2.4.2(12) of the Franklin Zoning Ordinance is hereby amended to delete the following text noted with a ~~strike through~~; to add the following text noted in **bold**, and is approved to read as follows:

~~(12) Amendments for Revisions to Development Plans, Site Plans, Preliminary Plats approved after January 1, 2015~~

~~Amendments to Development Plans, Site Plans and Preliminary Plats approved after January 1, 2015, will meet the criteria set forth in the State of Tennessee Vesting Property Rights Act of 2014, Section 1, (h) (l), addressing amendments.~~

~~An amendment to an approved development plan by the developer must be approved by the Board of Mayor and Aldermen to retain the protections of the vested property right.~~

~~An amendment may be denied based upon a written finding by the local government that the amendment:~~

- ~~(A) Alters the proposed use;~~
- ~~(B) Increases the overall area of the development;~~
- ~~(C) Alters the size of any nonresidential structures included in the development plan;~~
- ~~(D) Increases the density of the development so as to affect traffic, noise or other environmental impacts, or~~
- ~~(E) Increases any local government expenditure necessary to implement or sustain the proposed use.~~

- ~~(2) If an amendment is denied by the Board of Mayor and Aldermen based upon such a written finding, then the applicant may either proceed under the prior approved plan with the associated vested property right or, alternatively, allow the vested property right to terminate and submit a new application under this section. Notwithstanding this subsection (h), a vested property right shall not terminate if the Board of Mayor and Aldermen determines, in writing, that it is in the best interest of the community to allow the development to proceed under the amended plan without terminating the vested property rights.~~
- ~~(3) Staff will review all amendments requested by developer(s) and approve those with minor changes not impacting the development and meeting the criteria of the Vesting Property Rights Act of 2014. Staff will forward to the Board of Mayor and Aldermen all requests for amendments to project approved after January 1, 2015, that contain changes related to 2.4.2 (12) (1) (A) through E.~~

(12) Reserved

SECTION V: That Chapter 2, Section 2.4, Subsection 2.4.2(13) of the Franklin Zoning Ordinance is hereby amended to delete the following text noted with a ~~strikethrough~~; to add the following text noted in **bold**, and is approved to read as follows:

~~(13) — Time Limit~~

~~Since the approval of a Development Plan is not intended for speculative development projects, but represents an applicant's firm intention to develop according the entitlements and master plan approved with the Development Plan, the Planning Commission shall review each Development Plan within two (2) years of the BOMA approval date and each subsequent year until the PUD Development Plan is deemed Complete. For the purposes of this subsection, Complete shall mean either the issuance of a building permit for any section of the PUD and vertical construction has commenced or the issuance of a Grading Permit for any section of the PUD and construction of streets, sewer, water, or other utilities (land preparation such as clearing, grading, and filling shall not be a sufficient level of construction activity to be considered complete); Actively Under Development shall mean that either site plans and plats are approved by the City for any section of the PUD or land preparation such as clearing, grading, and filling is underway for any section of the PUD; and Inactive shall mean that none of the items defined as Complete or Actively Under Development have occurred on site. The FMPC may consider other factors not specifically described above in the review of the status of the PUD.~~

~~During the FMPC review of the status of the PUD, Development Plans shall be classified as (1) Complete, (2) Actively Under Development, or (3) Inactive. If, after review, the project is deemed Actively Under Development by the FMPC, then the project shall again be reviewed within 1 year to re-determine its status. If, after review, the project is deemed Inactive by the FMPC, the following process shall apply to determine the continued appropriateness of the Development Plan:~~

- ~~(a) — The FMPC shall make a recommendation onto the BOMA as to whether the Development Plan should remain in effect on the property, whether any amendments or revisions to the approved Development Plan are necessary, or whether the Development Plan should be revoked. The FMPC may consider the following in the review of the Development Plan the Land use Plan, the Zoning Ordinance, the Subdivision Regulations, and/or any other City regulations.~~
- ~~(b) — The BOMA shall consider the FMPC recommendation and then shall either affirm that the Development Plan should remain in effect, providing a 1 year extension for the plan, or shall act to revoke the Development Plan.~~

(13) Reserved

SECTION VI: That Chapter 2, Section 2.4, Subsection 2.4.2 (14) through (18) of the Franklin Zoning Ordinance are hereby created with the following language to be approved to read as follows:

(14) Vesting Period and Time Limit – Development Plan

In accordance with T.C.A. § 13-4-310, and subject to the exceptions set forth in said statute, the approval of a new Development Plan on, or after January 1, 2015, will initiate a vesting period, during which the development standards adopted by the City and in effect on the date of approval shall remain the standards applicable to the approved Development Plan. The vesting period for an approved Development Plan shall be as follows:

- (a) A Development Plan shall be vested for a period of three (3) years from the date of approval. A Development Plan shall be considered approved on the effective date of the Resolution approving the Development Plan by the BOMA.
- (b) If the applicant secures approval of a Site Plan, secures any necessary permits, and commences site preparation within the initial three (3) year vesting period, then the vesting period shall be extended an additional two (2) years beyond the expiration of the initial three (3) year vesting period. Approval of a site plan shall become effective upon the date of approval by the FMPC or administratively by staff, as required by Subsection 2.4.3.

During the two (2) year extension period, the applicant must obtain approval of, and record, a final plat, if required, commence construction, and maintain any necessary permits to remain vested. Approval of a final plat shall be considered effective upon the date the applicant obtains the last signature of approval required on the plat for recording.

- (c) If construction commences within the initial five (5) year vesting period, then the vesting period shall remain in effect until the City has certified the final completion of the development through the issuance of all Final Certificates of Occupancy and the release of all Maintenance Obligations; provided that the total vesting period shall not exceed ten (10) years from the date of approval of the Development Plan unless an extension is granted by the BOMA pursuant to Subsection 2.4.2(16)(b); provided further, that the applicant maintains any necessary permits during the ten-year period.
- (d) There shall be a separate vesting period applicable to each section or phase of a development that is planned to be developed in two or more sections or phases as described in the Development Plan approved by the BOMA. The development standards which are in effect on the date of approval of the Development Plan for the first section or phase of the development shall remain the development standards applicable to all subsequent sections or phases in the development until the City has certified the final completion of the development through the issuance of all Final Certificates of Occupancy and the release of all Maintenance Obligations; provided that the total vesting period for all sections or phases shall not exceed fifteen (15) years from the date of the approval of the Development Plan unless an extension is granted by the BOMA pursuant to Subsection 2.4.2(16)(b); provided further, that the applicant maintains any necessary permits during the fifteen-year period.

(15) Amendments to Development Plans Approved on, or After January 1, 2015

- (a) Except as provided in Subsection 2.4.2(15)(b) below, amendments to Development Plans originally approved on, or after January 1, 2015, shall be approved by the BOMA, FMPC, or

administratively by staff, as required by Subsection 2.4.2(11), in order to retain the protections of the vested property right. An amendment may be denied based upon a written finding that the proposed amendment fails to meet the development standards in effect at the time the Development Plan was approved.

- (b) The FMPC and the BOMA shall review and approve amendments as specified in Subsection 2.4.2(11)(a), if the proposed amendment:
 - (i) Alters the proposed use or uses;
 - (ii) Increases the overall area of the development;
 - (iii) Alters the size of any nonresidential structures included in the Development Plan;
 - (iv) Increases the density of the development so as to affect traffic, noise, or other environmental impacts; or
 - (v) Increases any local government expenditure necessary to implement or sustain the proposed use.

Pursuant to T.C.A. § 13-4-310 (h)(1), the BOMA may deny a request to amend a Development Plan based upon a written finding that the proposed amendment fails to meet the development standards in effect at the time the Development Plan was approved, or for any of the reasons listed above in (i) through (v).

- (c) If an amendment is denied based upon such a written finding, then the applicant may either proceed under the prior approved plan with the associated vested property right or, alternatively, allow the vested property right to terminate and submit a new application for approval of a Development Plan. New applications for approval of a Development Plan shall be required to meet all of the development standards then in effect for those portions of the project not already constructed or under construction. However, notwithstanding the provisions of this Subsection, a vested property right shall not terminate if the BOMA determines, in writing, that it is in the best interest of the community to allow the development to proceed under the amended plan without terminating the vested property right.

(16) Expiration and Extension of Vesting period

- (a) Upon the expiration of a vesting period for a Development Plan, construction may not proceed unless a new Development Plan is approved by the BOMA pursuant to the provisions of Subsection 2.4.2. Any new application for approval of a Development Plan shall be required to meet all of the development standards then in effect for those portions of the project not already constructed or under construction.
- (b) Alternatively, the BOMA may grant an extension of the total vesting period for a development if it determines, in writing, that it is in the best interest of the community to allow the development to proceed without terminating the vested property right.

(17) Termination of Vested Property Right – Violation of Conditions of Approval

Notwithstanding the foregoing, approval of a Development Plan will be subject to any conditions established at the time of approval. Pursuant to T.C.A. § 13-4-310(f), if the established conditions of approval for a Development Plan are not met, the applicant will be allowed 90 days to cure the violation of any condition of approval; provided further, that the BOMA may grant an additional time period to cure the violation, upon a written determination that it is in the best interest of the community. Thereafter, the violation of any such conditions shall cause the vested rights applicable to the Development Plan to terminate; provided, however, the BOMA may allow a property right to remain vested despite the

occurrence of the violation when a written determination is made that such continuation is in the best interest of the community.

(18) Enforcement of Vested Development Standards

A vested development standard shall not preclude the City from enforcing a development standard in accordance with the provisions of T.C.A. § 13-4-310(g).

SECTION VII: That Chapter 2, Section 2.4, Subsection 2.4.3 (7) of the Franklin Zoning Ordinance is hereby amended to delete the following text noted with a ~~strikethrough~~; to add the following text noted in **bold**, and is approved to read as follows:

(7) Time Limit

The following time limits shall apply for Site Plans that were approved on, or before December 31, 2014, or for Site Plans that were approved on, or after January 1, 2015, that are associated with a Development Plan, Concept Plan, or Preliminary Plat originally approved on, or before December 31, 2014:

- (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 Subsection 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.

SECTION VIII: That Chapter 2, Section 2.4, Subsection 2.4.3 (8) of the Franklin Zoning Ordinance is hereby amended to delete the following text noted with a ~~strikethrough~~; to add the following text noted in **bold**, and is approved to read as follows:

~~(8) Amendments of an Approved Site Plan~~

- ~~(a) — If an applicant desires to amend an approved Site Plan, then the amendment may be made with the approval of the appropriate city department with the exception of those changes stated in paragraph (b) below. However, if a proposed change will, in the opinion of the appropriate city department, substantially affect the terms of the original approval or would result in significant adverse impacts on the surrounding properties or the city at large, then a re-submittal to the Department of Planning and Sustainability or the FMPC (as appropriate) shall be required pursuant to the provisions of this chapter.~~

- ~~(b) A change to an approved Site Plan shall require a re-submittal to the decision-making body responsible for the original approval, if:~~
- ~~(i) The density of the development is to be increased;~~
 - ~~(ii) The gross square footage of nonresidential buildings is to be increased or the number of stories is to be reduced or increased;~~
 - ~~(iii) Required landscaping materials are to be deleted;~~
 - ~~(iv) Required open space is to be deleted;~~
 - ~~(v) There is any change in plans for historic structures or sites;~~
 - ~~(vi) Drainage, streets, or other engineering design changes will materially alter items approved in the Site Plan; and/or~~
 - ~~(vii) There are any major changes that could potentially create an adverse impact on stormwater quality, stormwater quantity management, or other stormwater management ordinance requirements.~~

(8) Vesting Period and Time Limit – Site Plans Approved on, or After January 1, 2015

(a) Site Plans Not Associated with a Preliminary Development Plan as Specified in Subsection 1.8.5

In accordance with T.C.A. § 13-4-310, and subject to the exceptions set forth in said statute, the approval of a new Site Plan, which is not part of a Preliminary Development Plan as specified in Subsection 1.8.5, will initiate a vesting period, during which the development standards adopted by the City and in effect on the date of approval shall remain the standards applicable to the approved Site Plan. The vesting period for an approved Site Plan shall be as follows:

- (i) A Site Plan shall be vested for a period of three (3) years from the date of approval. A Site Plan shall be considered approved upon the date of approval by the FMPC or, administratively by staff, as required by Subsection 2.4.3(2).**
- (ii) If the applicant secures approval of a Final Plat, if required, secures any necessary permits, and commences site preparation within the initial three (3) year vesting period, then the vesting period shall be extended an additional two (2) years beyond the expiration of the initial three (3) year vesting period. Approval of a final plat shall be considered effective upon the date the applicant obtains the last signature of approval required on the plat for recording. During the two (2) year extension period, the applicant must record the final plat, if required, commence construction, and maintain any necessary permits to remain vested.**
- (iii) If construction commences within the initial five (5) year vesting period then the vesting period shall remain in effect until the City has certified the final completion of the development through the issuance of all Final Certificates of Occupancy and the release of all Maintenance Obligations; provided that the total vesting period shall not exceed ten (10) years from the date of approval of the Site Plan unless an extension is granted by the FMPC pursuant to Subsection 2.4.3(10)(b); provided further, that the applicant maintains any necessary permits during the ten-year period.**
- (iv) There shall be a separate vesting period applicable to each section or phase of a development that is planned to be developed in two or more sections or phases as described in the Site Plan approved by the FMPC or Administratively by Staff. The development standards which are in effect on the date of approval of the Site Plan for the first section or phase of the development shall remain the development standards applicable to all subsequent sections or phases in the development until the City has certified the final completion of the development through the issuance of all Final Certificates of Occupancy and the release of all Maintenance Obligations; provided that the total vesting period for all sections or phases shall not exceed fifteen (15)**

years from the date of the approval of the Development Plan unless an extension is granted by the FMPC pursuant to Subsection 2.4.3(10)(b); provided further, that the applicant maintains any necessary permits during the fifteen-year period.

- (b) Site Plans Associated with a Preliminary Development Plan as specified in Subsection 1.8.5**
A Site Plan that is associated with a Preliminary Development Plan as specified in Subsection 1.8.5, shall be valid for two (2) years from the date of approval of the Site Plan by the FMPC, or administratively by staff. The development standards adopted by the City, and in effect on the date of approval of the Preliminary Development Plan, shall remain the standards applicable to the approved Site Plan. If the applicant secures approval of, and records, a Final Plat, if required, secures any necessary permits, and commences construction within the two (2) year period, then the Site Plan shall remain valid throughout the vesting period established for the approved Preliminary Development Plan.

SECTION IX: That Chapter 2, Section 2.4, Subsection 2.4.3 (9) through (12) of the Franklin Zoning Ordinance are hereby created with the following language to be approved to read as follows:

(9) Amendments

- (a) Amendments to a Site Plan originally approved on, or before December 31, 2014, or Amendments to Site Plans approved on, or after January 1, 2015, that are associated with a Development Plan, Concept Plan, Regulating Plan, or Preliminary Plat originally approved on, or before December 31, 2014**

The following requirements shall apply to amendments to Site Plans originally approved on, or before December 31, 2014, or to Site Plans approved on, or after January 1, 2015, that are associated with a Development Plan, Concept Plan, Regulating Plan, or Preliminary Plat that was originally approved on, or before December 31, 2014:

- (i) If an applicant desires to amend an approved Site Plan, then the amendment may be made with the approval of the appropriate City Department with the exception of those changes stated in Subsection 2.4.3(9)(a)(ii) below. However, if a proposed change will, in the opinion of the appropriate city department, substantially affect the terms of the original approval or would result in significant adverse impacts on the surrounding properties or the City at-large, then a resubmittal of the site plan for approval by the FMPC, or administratively by staff, as appropriate, shall be required pursuant to the provisions of Subsection 2.4.3.
- (ii) An amendment to an approved Site Plan shall require a resubmittal and approval by the decision-making body responsible for the original approval, if:
- A.) The density of the development is to be increased;
 - B.) The gross square footage of nonresidential buildings is to be increased or the number of stories is to be reduced or increased;
 - C.) Required landscaping materials are to be deleted;
 - D.) Required open space is to be deleted;
 - E.) There is any change in plans for historic structures or sites;
 - F.) Drainage, streets, or other engineering design changes will materially alter items approved in the Site Plan; and/or
 - G.) There are any major changes that could potentially create an adverse impact on stormwater quality, stormwater quantity management, or other stormwater management ordinance requirements.

- (b) Amendments to a Site Plan Originally Approved on, or After January 1, 2015, and Associated with a Preliminary or Final Development Plan as specified in Subsection 1.8.5**

Except as provided in Subsections 2.4.3(9)(b)(i) through (iii) below, an amendment to a Site Plan shall be approved by the FMPC, or administratively by staff, according to the requirements specified in Section 2.4.3(9)(a)(i), in order to retain the protections of a vested property right.

- (i) An amendment may be denied by the FMPC, or administratively by staff, based upon a written finding that the proposed amendment fails to meet the development standards in effect at the time the Site Plan was approved.
- (ii) The FMPC shall review and approve amendments, if the proposed amendment:
 - A.) Alters the proposed use or uses;
 - B.) Increases the overall area of the development;
 - C.) Alters the size of any nonresidential structures included in the Development Plan;
 - D.) Increases the density of the development so as to affect traffic, noise, or other environmental impacts; or
 - E.) Increases any local government expenditure necessary to implement or sustain the proposed use.

Pursuant to T.C.A. § 13-4-310 (h)(1), the FMPC may deny a request to amend a Site Plan based upon a written finding that the proposed amendment fails to meet the development standards in effect at the time the Site Plan was approved, or for any of the reasons listed above in (A) through (E).

- (iii) If an amendment is denied based upon such a written finding, then the applicant may either proceed under the prior approved Site Plan with the associated vested property right or, alternatively, allow the vested property right to terminate and submit a new application for approval of a Site Plan. Any new application for approval of a Site Plan shall be required to meet all of the development standards then in effect for those portions of the project not already constructed, or under construction. However, notwithstanding the provisions of this Subsection, a vested property right shall not terminate if the FMPC determines, in writing, that it is in the best interest of the community to allow the development to proceed under the amended plan without terminating the vested property right.

(10) Expiration and Extension of Vesting period

- (a) Upon the expiration of a vesting period for a Site Plan as established pursuant to Subsection 2.4.2(14) or Subsection 2.4.3(8), construction may not proceed unless a new Site Plan is approved by the FMPC or administratively by staff pursuant to the provisions of Subsection 2.4.3. Any new application for approval of a Site Plan shall be required to meet all of the development standards then in effect for those portions of the project not already constructed or under construction.
- (b) Alternatively, the FMPC may grant an extension of the total vesting period for a development if it determines, in writing, that it is in the best interest of the community to allow the development to proceed without terminating the vested property right.

(11) Termination of Vested Property Right – Violation of Conditions of Approval

Notwithstanding the foregoing, the approval of a Site Plan will be subject to any conditions established at the time of approval. Pursuant to T.C.A. § 13-4-310(f), if the established conditions of approval for a Site Plan are not met, the applicant will be allowed 90 days to cure the violation of any condition of approval; provided further, that the decision making body responsible for the approval of the Site Plan may grant an additional time period to cure the violation, upon a written determination that it is in the best interest of the community. Thereafter, the violation of any such conditions shall cause the vested rights applicable to the Site Plan to terminate; provided, however, the FMPC may allow a property right to remain vested despite the occurrence of the violation when a written determination is made that such continuation is in the best interest of the community.

(12) Enforcement of Vested Development Standards

A vested development standard shall not preclude the City from enforcement a development standard in accordance with the provisions of T.C.A. § 13-4-310(g).

SECTION X: That Chapter 8, Section 8.3, of the City of Franklin Zoning Ordinance is hereby amended by inserting the following definitions, alphabetically, and is approved to read as follows:

Construction

For purposes of the Vested Property Rights Act of 2014, 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.

Development standards

For purposes of the Vested Property Rights Act of 2014, 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; 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 the Act. Development standards do not include standards required by Federal or State law; or building construction safety standards which are adopted pursuant to authority granted under T.C.A. § 68-120-101;

Final Development Plan

For purposes of the Vested Property Rights Act of 2014, is a plan which has been submitted by an applicant and approved by the City of Franklin describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The following types of plans approved, on or after January 1, 2015, are considered to be Final Development Plans:

- (1) Approval by the FMPC, or administratively by staff, of a Site Plan as required by Subsection 2.4.3, when not part of a Preliminary Development Plan as specified in Subsection 1.8.5(1), or
- (2) Approval by the FMPC, or Administratively by Staff, of a Final Plat as required by the Franklin Subdivision Regulation, when not part of a Preliminary Development Plan as specified in Subsection 1.8.5(1).

A Final Development Plan shall include the boundaries of the site; significant topographical and other natural features affecting development of the site; the location on the site of the proposed buildings, structures, and other improvements; the dimensions, including height, of the proposed buildings and other structures or a building envelope; the location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways; and any additional information as required in the checklist included in the Administrative Manual for the type of plan being approved. A variance does not constitute a final development plan, and approval of a final development plan with the condition that a variance be obtained does not confer a vested property right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type of use, the intensity of use, and the ability to be served with essential utilities and road infrastructure for a specified parcel or parcels of property may constitute a final development plan.

Preliminary Development Plan

For the purposes of the Vested Property Rights Act of 2014, is a plan which has been submitted by an applicant that depicts a single-phased or multi-phased planned development typically used to facilitate initial public feedback and to secure preliminary approvals. Examples of information typically found on Preliminary Development Plans include information as required in the checklist included in the Administrative Manual for the type of plan being approved, and including, but not limited to information about proposed land uses, density and intensity of development, road networks, public utilities, general location of off-street parking, 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. The following types of plans approved, on or after January 1, 2015, are considered to be Preliminary Development Plans:

- (1) Approval by the BOMA of a PUD Development Plan, as required by Subsection 2.4.2;
- (2) Approval by the FMPC of a Preliminary Plat, when not part of a PUD Development Plan, as required by the Franklin Subdivision Regulations; or
- (3) Approval by the BOMA of a Special Permit, as required by Subsection 4.4.

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.

SECTION XI: Severability. In the event that any section, clause, provision, or part of this ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable full force and effect. If any part of this ordinance is found to be invalid in any one or more of its several applications, all valid applications that are severable from the invalid applications shall remain in effect.

SECTION XII: BE IT FINALLY ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee that this Ordinance shall take effect from and after its passage on third and final reading, the health, safety, and welfare of the citizens requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: _____
Eric S. Stuckey
City Administrator

BY: _____
Dr. Ken Moore
Mayor

Approved as to Form:

Shauna R. Billingsley, City Attorney

PLANNING COMMISSION RECOMMENDED: _____

PASSED FIRST READING: _____

PUBLIC HEARING HELD: _____

PASSED SECOND READING: _____

PASSED THIRD READING: _____