

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Planning & Economic Development Department

**AGENDA DATE:** Introduction: April 12, 2011  
Public Hearing: April 19, 2011

**CONTACT PERSON/PHONE:** Mathew McElroy, (915) 541-4193,  
[McElroyMX@elpasotexas.gov](mailto:McElroyMX@elpasotexas.gov)

**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT:**

An Ordinance amending Title 1 (General Provisions), Chapter 1.04 (General Provisions), of the El Paso City Code to add a section addressing the vesting of projects. The penalty is as provided for in Section 1.08 of the El Paso City Code

**BACKGROUND / DISCUSSION:**

This amendment takes the current vesting rights provisions currently in Title 19 and inserts it into Title 1 so that it will apply to the entire code, generally. The item was originally heard at CPC on March 10 where it was postponed so that staff could work with representation from the development community to draft language that was agreeable to both sides. On March 24, the ordinance was approved by CPC as amended.

**PRIOR COUNCIL ACTION:**

On November 30, 2010, the El Paso City Council approved moving forward with a Smart Growth implementation Plan. Items can be expected throughout April, May and then throughout the rest of the calendar year.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) and City Plan Commission (CPC) both recommend approval of this item.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) N/A

**FINANCE:** (if required) N/A

**DEPARTMENT HEAD:** Mathew S. McElroy  
Deputy Director-Planning & Economic Development

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**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 1 (GENERAL PROVISIONS), CHAPTER 1.04 (GENERAL PROVISIONS), OF THE EL PASO CITY CODE TO ADD A SECTION ADDRESSING THE VESTING OF PROJECTS. THE PENALTY IS AS PROVIDED FOR IN SECTION 1.08 OF THE EL PASO CITY CODE.**

**WHEREAS**, Chapter 245 of the Texas Local Government Code addresses the vesting of projects and requires the city to apply rules and regulations in effect at the time a project is vested to any subsequent permit or approval; and,

**WHEREAS**, Chapter 245 of the Texas Local Government Code allows a city to place expiration dates on projects and on permits issued by the city; and,

**WHEREAS**, the City desires to establish a process and procedure for the issuance of local permits for projects in accordance with the provisions of Texas Local Government Code, Chapter 245 or successor statute.

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

SECTION 1. That Title 1, General Provisions, Chapter 1.04 (General Provisions), of the El Paso City Code be amended to add the following section:

1.04.070 Vesting of Projects

A. Purpose. The purpose of this section is to establish a process and procedure for the issuance of local permits for projects in accordance with the provisions of Texas Local Government Code, Chapter 245 or successor statute.

B. Applicability. This Section shall be applicable to permits issued under the City Code. An applicant requesting approval of a permit, may submit a vested rights application to the city if the applicant believes that the permit is for a project that has been vested. A permit, for purposes of determining whether a project is vested, is defined as a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought. A vested rights application may also be filed prior to the expiration of certain permits pursuant to Section 19.41.060.

C. Application. The vested rights application shall be submitted to the department responsible for issuing the permit. The application shall include the following information and documents:

1. A narrative description of the grounds for submittal of the application;
2. A copy of each approved or pending application which is the basis for the contention that the project or permit is vested;

3. The date of submittal of the application for the permit which the applicant contends vests the project;
4. Any subsequent applications submitted or permits issued towards completion of the project
5. Identification of any current standards which petitioner agrees can be applied to the application at issue;
6. A copy of any prior vested rights determination involving the same land; and
7. Whenever the petitioner alleges that a permit or project subject to expiration under this Section should not be terminated, a description of the event or events constituting progress toward completion of the project.

D. Time for Filing Application. A vested rights application shall be filed with the permit for which a vested right is claimed or at a date prior to the date of expiration of any permit when filed pursuant to Section 19.41.060.

E. Processing of applications.

1. Responsible Official. The responsible official for a vested rights application is the City Manager or her designee.
2. Responsible Official Decision. The responsible official is the decision-maker on the application, and shall determine whether the project is vested and shall formulate a written response summarizing the reasoning and setting forth the decision. After reviewing the application for completion, the responsible official shall promptly forward a copy of the completed vested rights application, and any other documentation the responsible official deems necessary, to the city attorney for their review. The responsible official's written response shall be delivered to the applicant within ten (10) business days of the date the vested rights application is filed with the responsible official.

F. Appeal of Responsible Official Decision.

1. The applicant may appeal the responsible official's decision to the City Council within ten (10) business days of the date of such decision.
2. An applicant wishing to appeal the decision shall submit in writing such request stating the reasons for the appeal and providing the necessary documents to support the appeal to the responsible official.
3. If after receipt of the written appeal and review of the accompanying documents the responsible official determines that its initial decision should be reversed, then the responsible official may reconsider its initial decision and reverse such decision. The responsible official shall state in writing the reason for the reversal and shall notify the appellant in writing. If the responsible official does not reverse its initial decision, then the appeal shall be submitted to the City Council by the responsible official.
4. The appeal shall be placed on the City Council agenda by the responsible official within fifteen (15) business days after the date the responsible official received the written appeal. Documents submitted by the appellant shall be included as back up for the appeal and any documentation or information the responsible official determines is necessary or will assist the City Council in making their determination shall also be included.
5. The City Council shall render a decision within thirty (30) business days from the date the item is placed on the City Council agenda. City Council shall decide the vested rights appeal based upon the following factors:

- a. The nature and extent of prior applications filed for the land subject to the vested rights application;
- b. Whether any prior vested rights determinations have been made with respect to the property subject to the vested rights application;
- c. Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
- d. Whether any statutory exception applies to the standards in the current subdivision ordinance from which the applicant seeks relief;
- e. Whether any prior approved applications relied upon by the petitioner have expired or have become dormant;
- f. Whether progress has been made on the project or whether the project has become dormant; and
- g. Any other provisions outlined in the Texas Local Government Code Chapter 245 or successor statute.

G. Stay of Proceedings. Receipt of a written appeal of a decision stays all proceedings of the city in furtherance of the decision from which appeal is taken, including without limitation, acceptance, processing or issuance of any applications that are dependent on the application being appealed, and any development activities authorized by initial approval of the application. The stay shall be lifted only if the responsible official certifies in writing to the appellate authority that a stay would cause imminent peril to life or property.

H. Dormant permits and projects. Projects that become dormant shall not be entitled to vested status. A project becomes dormant and the project expires when progress toward completion of the project has not occurred.

1. A permit under this section means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

2. For purposes of determining whether a project is still vested or has become dormant, any permit issued by the city not otherwise having a permit expiration period shall expire two years after the issuance of the permit if no progress has been made towards completion of the project.

3. A project shall expire after the fifth anniversary of the date in which the first permit application was filed for the project if no progress has been made towards completion of the project.

4. Progress towards completion of the project shall include any one of the following:

- a. An application for a final plat or plan is submitted to a regulatory agency;
- b. 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;
- c. 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;

- d. Fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- e. Utility connection fees or impact fees for the project have been paid to a regulatory agency.

I. Vesting does not apply to:

- 1. A permit that is at least two years old, is issued for the construction of a building or structure intended for human occupancy or habitation, and is issued under laws, ordinances, procedures, rules, or regulations adopting only:
  - a. uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or
  - b. local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons;
- 2. municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;
- 3. regulations for sexually oriented businesses;
- 4. municipal or county ordinances, rules, regulations, or other requirements affecting colonias;
- 5. fees imposed in conjunction with development permits;
- 6. regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;
- 7. regulations for utility connections;
- 8. regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;
- 9. construction standards for public works located on public lands or easements; or
- 10. regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:
  - a. affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building size, residential or commercial density, or the timing of a project; or
  - b. change development permitted by a restrictive covenant required by a municipality.

SECTION 2. Except as expressly herein amended, Title 1, General Provisions, of the El Paso City Code shall remain in full force and effect.

ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_ 2011.

***SIGNATURES ON FOLLOWING PAGE***

CITY OF EL PASO

ATTEST:

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John F. Cook, Mayor

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Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

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Lupe Cuellar  
Assistant City Attorney

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Mathew S. McElroy  
Deputy Director for Planning and  
Economic Development - Planning



# Amendment to Title 1, Vesting

Vesting provisions will apply to the entire code, generally- Including Title 18.

Dormant permits and projects: Dormant projects lose their vesting. A project becomes dormant and the project expires when progress toward completion of the project has not occurred.

**PERMIT:** a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

**EXPIRATION:** (if no progress is made)

- Permits: Two years after issuance
- Project: Five years after first permit application



**PROGRESS** towards completion of the project shall include any one of the following:

- a. An application for a final plat or plan is submitted to a regulatory agency;
- b. 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;
- c. Costs have been incurred for developing the project, including 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;
- d. Fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- e. Utility connection fees or impact fees for the project have been paid to a regulatory agency