

**ORDINANCE NO. 344**

**AMENDING CHAPTER 1 GENERAL PROVISIONS; BY ADOPTING ARTICLE 1.11 TITLED PERMITS PROJECTS AND VESTED RIGHTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Texas Local Government Code Chapter 245, commonly referred to as the State’s “Vested Rights Law”, provides an opportunity for landowners or developers to “grandfather” or “vest” government regulations that apply to development at the time of the filing of a permit application; and,

**WHEREAS**, the City of Bandera is authorized by law to establish an administrative procedure for consideration of any claim of a vested right; and,

**WHEREAS**, the City Council of the City of Bandera finds that it is in the best interest of the City to establish an administrative procedure for consideration of any claim of a vested right.


**NOW THEREFORE, BE IT ORDAINED THAT THE CITY COUNCIL OF THE CITY OF BANDERA, TEXAS**

Part 1: That Chapter 1 General Provisions, of the Bandera Code of Ordinance is hereby amended, by adopting Article 1.11 titled Permits, Projects and Vested Rights as set forth in the attached Exhibit A.

Part 2: The provisions of this ordinance are declared to be severable. If any section, subsection, sentence, clause, phrase, or portion of this ordinance shall for any reason to be held invalid or unconstitutional by any court of competent jurisdiction, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance, but they shall remain in effect; it being the legislative intent that this ordinance shall remain in effect notwithstanding the validity of any part.

Part 3: The provisions of this ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED ON THIS 6TH DAY OF FEBRUARY 2018

  
Suzanne Schauman, Mayor

Attest:

  
Jill Shelton, City Secretary

## EXHIBIT A

### AMENDING CHAPTER 1 GENERAL PROVISIONS, CODE OF ORDINANCES BY ADOPTING ARTICLE 1.11 TITLED PERMITS PROJECTS AND VESTED RIGHTS AS FOLLOWS:

#### Sec. 1.11.001 Permits, Projects and Vested Rights

(a) *Vested Rights.* Texas Local Government Code Chapter 245 (LGC) – Issuance of Local Permits, commonly referred to as the State’s “Vested Rights Law”, provides an opportunity for landowners or developers to “grandfather” or “vest” government regulations that apply to development at the time of the filing of a permit application. The City has established in this section an administrative procedure for consideration of any claim of a vested right.

(b) *Definitions.* The following words when used in this section shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

*Administrator* means the city administrator or his/her designee, designated by the city administrator to administer the provisions of this section.

*Permit* shall have the meaning ascribed to it in Local Government Code § 245.001.

*Project* shall have the meaning ascribed to it in Local Government Code § 245.001.

(c) *Permit applications - expiration.* Notwithstanding any other provision of this Code, all permit applications shall expire as stated herein, and any approved permit or authority to construct, build or execute any project pursuant to a permit or series of permits shall expire as follows:

(1) A permit application or plan for development, filed on or after April 27, 2005, shall expire on the 45th day after said application or plan is filed, unless approved, if:

(A) The applicant fails to provide documents or other information necessary to comply with the city's technical requirements relating to the form and content of the application;

(B) The city provides written notice to the applicant of the failure not later than the 10th business day after the date the application is filed specifying the necessary documents or other information and the date the application will expire if the documents or other information are not provided; and,

(C) The applicant fails to provide the specified documents or other information within the time provided in the notice.

(2) The Administrator may, but is not required, to extend the time only for issuance of a building permit to erect or improve a building or other structure, in which event the permit application shall expire when said extension expires. Any such extension shall be in writing and signed by the Administrator or his designee.

(d) *Permits and projects - expiration.*

(1) Only a Project which was in progress (as defined by LGC Section 245.003) or for which a completed Permit application was filed after September 1, 1997 may be

eligible to claim vested rights; any Project for which the completed Permit application was filed prior to September 1, 1997, or has expired, is not eligible.

- (2) The following Permits (as well as other Permits satisfying the requirements of LGC Chapter 245), which include Plat Applications, and Plats, may be relied on by a property owner or developer to establish certain vested rights for a Project. A Project will expire in five (5) years from the date the first Permit application was filed for the Project with the City if progress, as defined in LGC Section 245.005, has not been made towards completion of the Project. An expired Project is considered dormant, vested rights lapse and the Project must comply with current ordinances and requirements.

(A) Plat Applications

Vested rights under LGC Chapter 245 will be recognized for the Project that is the subject of a completed application for a plat that has been filed with the City, provided all necessary fees have been paid. The vested rights recognized for a Project located within the area being platted by such a plat application will expire two (2) years after the date of the initial plat application, provided fair notice is provided with the plat application in accordance with LGC Chapter 245, unless the plat application is heard by the City Council and approved within two (2) years after the date of the initial application. Neither an expired nor a withdrawn plat application may be relied upon as a Permit for the declaration of vested rights under LGC Chapter 245. If after the expiration or the withdrawal of a plat application the applicant wishes future plat approval of the subject property, a new plat application must be filed and new application fees shall be required.

(B) Plats

Vested rights under LGC Chapter 245 will be recognized for a Project associated with the property which is the subject of a plat that has been approved by the City Council provided that fair notice is provided with the plat application in accordance with LGC Chapter 245. The vested rights recognized for a Project located within the area platted by an approved plat will expire two (2) years after the date of plat approval unless the plat is recorded in the County Deed Records within two (2) years after the date of approval by the City Council.

(C) Other Permits

For the purposes of determining whether any vested rights exist, any other Permit for which an expiration date is not specifically set forth in this Code of Ordinances or in other applicable law shall expire two (2) years after the date the application for the Permit was filed with the City

if progress, as defined in LGC Section 245.005, has not been made towards completion of the Project.

(e) *Administrative Procedure for Consideration of Claim of Vested Rights.*

Any property owner claiming vested rights under Chapter 245 of the LGC, or other applicable vesting law, shall submit a letter explaining in sufficient detail the basis upon which the property owner is claiming vesting and, consequently, is exempt from or not subject to a particular current regulation, ordinance, rule, expiration date, or other requirement. Such written submission shall include, at a minimum, the following:

- (1) The name, mailing address, telephone number and email address of the property owner (or the property owner's duly authorized agent);
- (2) Identification of the property, including the address (if it exists) and the plat reference (if it exists) or metes and bounds (if not platted), for which the property owner claims a vested right;
- (3) Provide Project name, type of Permit and date the Permit was filed;
- (4) If a property owner claims that certain regulations do not apply to the Project, the property owner must identify, with particularity, all requirements that the property owner claims do not apply; and
- (5) Attach all supporting documents, if any.

The letter should be addressed to the City of Bandera City Administrator.

(f) *Vested Rights Determination.*

The Administrator will review the request and supporting documents and issue a final administrative determination of whether a vested right exists in relation to the Project, and shall identify in writing to the property owner all claims for which vested rights have been granted (the "Vested Rights Determination").

(g) *Appeal.*

If the property owner believes that the Vested Rights Determination is in error, the property owner shall have the right to appeal such Vested Rights Determination to the City Council, which will have jurisdiction to hear and decide the appeal.