

ORDINANCE NO. 1033

AN ORDINANCE OF THE CITY OF ATHENS, TENNESSEE, PROVIDING THAT THE ATHENS MUNICIPAL CODE, TITLE 14, CHAPTER 2, SECTION 4.17.07 BE AMENDED TO ADD LANGUAGE CONCERNING VESTED DEVELOPMENT RIGHTS; AND PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Tennessee General Assembly has enacted the Vested Property Rights Act of 2014 (the "Act"), which establishes statewide standards under which "vesting periods" is commenced upon the approval of new development plans; and

WHEREAS, during the vesting periods established under the new 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 takes effect January 1, 2015, provided that local governments may pass an ordinance or resolution prior to such effective date to identify the types of development plans that will cause property rights to become vested and specify the actions that constitute approval of such development plans; and

WHEREAS, the revisions to the Zoning Ordinance set forth herein are intended to implement the requirements of the Act in regard to development plans approved by the City of Athens.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, TENNESSEE:

Section 1: That the Section 4.17.07 shall be amended to read as follows:

4.17.07. SITE PLAN SUBMISSION.

- A. **General requirements** – The owner or developer shall submit three copies or as many as may be required of his proposed site plan to the Community Development Department twenty-one (21) days prior to his intended date of site alteration. The Community Development Department shall consider the site plan in light of the provisions of this chapter and approve or disapprove same as required, the plans then shall be returned to the owner or his agent with the date of such approval or disapproval noted thereon over the signature of the Director of Public Works, Building Official and Athens Fire Chief or any of their designees.*
- B. **Vested Property Rights** – The Tennessee General Assembly enacted Public Chapter No. 686, the "Vested Property Rights Act of 2014" which amends Title 13, Chapter 3 specifically T.C.A. § 13-3-413 regarding the powers of regional planning commissions. As enacted, far-reaching statutory requirements are established relative to development standards and vested property rights for landowners and developers that will affect the ability of cities to establish and update contemporary development standards to guide land use and growth in the future.*

Definitions of Vested Property Rights

"Applicant" means a landowner or developer or any party, representative, agent, successor, or heirs of the landowner or developer.

"Construction" means the erection of construction materials in a permanent manner, and includes excavation, demolition, or removal of an existing building.

"Development plan" means both a preliminary development plan and a final development plan.

"Development standards" means all locally adopted or enforced standards applicable to the development of property including, but not limited to planning: storm water requirements; layout; design; local infrastructure construction

standards, off-site improvements, lot size, configuration, and dimensions. NOT included are standards required by federal or state law, or building construction safety codes.

“Final development plan” means a plan approved by the local government describing with reasonable certainty the use of property. Such plan may be in the form of, but not limited to, a planned unit development plan; subdivision plat; general development plan; subdivision infrastructure construction plan; final engineered site plan; or any other land-use approval designated utilized. UNLESS otherwise expressly provided by the City of Athens, such a plan shall include the boundaries of the site; significant topographical features affecting the development of the site; locations of improvements; building dimensions; and the location of all existing and proposed infrastructure on the site. Neither a sketch plan nor other document that fails to describe with reasonable certainty the use and development scheme may constitute a final development plan.

“Preliminary development plan” means a plan submitted to facilitate initial public feedback, and secure preliminary approvals from local government. It serves as a guide for all future improvements.

“Site preparation” means excavation, grading, demolition, drainage, and physical improvements such as water and sewer lines, footings, and foundations.

Vesting Rights and Periods

Vested property rights are established for any preliminary development plan, final development plan (where no preliminary development plan is required), or building permit issued to allow construction of a building to commence where there is no local requirement for prior approval of a preliminary development plan.

During the vesting period, the locally adopted development standards in effect on the date of approval remain the development standards applicable to that property or building during the vesting period as follows:

- *Building permit projects (no preliminary plan approval) – The vesting period commences on the date of building permit issuance and remains in effect for the period authorized by the building permit.*
- *Development plan project – The vesting period applicable to a development plan is three years, beginning on the date of approval of the preliminary development plan; provided the applicant obtains final development plan approval, secure permits, and commences site preparation within the 3-year vesting period.*
- *If the applicant obtains approval of a final development plan, secures permits, and commences site preparation within the 3-year vesting period, then the vesting period is extended an additional two years (to a total of five years) to commence construction from the date of preliminary plan approval. During the two year period, the applicant shall commence construction and maintain any necessary permits to remain vested.*
- *If construction commences within the 5-year vesting period following preliminary development plan approval, the development standards in effect on the date of approval remain in effect until final completion of the project, provided, however, that the vesting period shall not exceed ten (10) years unless the City of Athens grants an extension through an ordinance or resolution; and provided further that the applicant maintain all necessary permits during the 10-year period.*
- *Multi-phase projects – A separate vesting period applies for projects proceeding in two or more sections or phases (as set forth in the development plan). The development standards in effect on the date of approval of the preliminary development plan for the first section or phase remain in effect for all subsequent sections or phases; provided the total vesting period does not exceed fifteen (15) years unless the City of Athens grants an extension through an*

ordinance or resolution; and provided that the applicant maintain all necessary permits during the 15-year period.

Type of Project	Effective Date	Vesting Period	Total Vesting Period to Maintain Vested Rights	Required Actions
Building Permit (No development plan required)	Date of Issuance of Building Permit	Period authorized by the building permit	Period authorized by the building permit	Complete construction within period authorized by the building permit
Development Plan				
Preliminary Development Plan	Date of Issue	3 Years	3 Years	Obtain Final Development Plan approval; secure permits; and commence site preparation
Final Development Plan	3 years from date of Preliminary Plan approval	2 Years	5 Years	Commence construction, maintain permits
	5 years from date of Preliminary Plan approval	5 Years	10 Years	Complete construction; maintain permits
Multi-phase or sections	Date of Issue of Preliminary Development Plan	Separate vesting period for each phase or section	15 Years	Complete construction for each phase; maintain permits

A vested property right attaches to and runs with the applicable property and confers upon the applicant the right to undertake and complete the development and use such property under the terms and conditions of a development plan, including any amendments thereto or under the terms and conditions of any building permit that has been issued with respect to the property.

Development plans

"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.

"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 plan;*
- (ii) A subdivision plat;*
- (iii) General development plan;*
- (iv) Subdivision infrastructure construction plan;*
- (v) Final engineered site plan; or*
- (vi) Any other land-use approval designation as may be utilized by the City of Athens*

Preliminary Development Plans and Final Development Plans 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; and the location of all existing and proposed infrastructure on the site, including water,

sewer, roads, and pedestrian walkways. A variance shall not constitute a final development plan, and approval of a final development plan with the condition that a variance be obtained shall 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.

Approval of a Development Plan

Approval of a development plan, regardless of type described above under the "Development Plan" section, shall occur when the development plan submitted shall be determined by the City of Athens to meet all local, state and federal regulations governing the development.

Termination of Vesting Rights

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

- *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, that the City of Athens may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;*
- *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 of Athens may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;*
- *Upon a finding by the City of Athens that the applicant intentionally supplied inaccurate information or knowingly made misrepresentations 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*
- *Upon the enactment or promulgation of a state or federal law, regulation, rule, policy, corrective action or other governance, regardless of nomenclature, that is required to be enforced by the City of Athens and that precludes development as contemplated in the approved development plan or building permit, unless modifications 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.*

The City of Athens 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 by the City of Athens.

Development Standards Enforcement

A vested development standard shall not preclude city enforcement of any development standard when:

- *The City of Athens obtains the written consent of the applicant or owner;*
- *The City of Athens determines, 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 threat cannot be mitigated within a reasonable period of time, as specified in writing by the City of Athens, by the applicant using vested property rights;

- *Upon the written determination by the City of Athens of 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 local government, by the applicant using vested property rights;*
- *A development standard is required by federal or state law, rule, regulation, policy, corrective action, order, or other type of governance that is required to be enforced by the City of Athens, regardless of nomenclature; or*
- *The City of Athens is undertaking an action 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.*

Development Plan Amendment

An amendment to an approved development plan by the applicant must be approved by the City of Athens to retain the protections of the vested property right. An amendment may be denied based upon a written finding by the City of Athens that the amendment:

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

If an amendment is denied by the City of Athens 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. Notwithstanding the foregoing, a vested property right shall not terminate if the City of Athens 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.

Waiver Rights Prohibited

A City of Athens may not require an applicant to waive the applicant's vested rights as a condition of approval, or as a consideration of approval, of a development plan or the issuance of a building permit.

Extension of Rights

The vesting period for an approved construction project may be extended as deemed advisable by the City of Athens.

Zoning with Vested Property Rights

A vested property right, once established, precludes the effect of any zoning action by a City of Athens which would change, alter, impair, prevent, diminish, or otherwise delay the development of the property, while vested, as described in an approved development plan or building permit. With said exception, nothing shall preclude, change, amend, alter or impair the authority of a City of Athens to exercise its zoning authority.

Development Moratorium

In the event a City of Athens enacts a moratorium on development or construction, the vesting period established by this act shall be tolled during the moratorium period.

Eminent Domain with Vested Property Rights

A vested property right does not preclude, change, amend, alter or impair the authority of a City of Athens to exercise its eminent domain powers as provided by law.

Section 2. That all Ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent necessary to implement this ordinance.

Section 3: In the event that any part of this ordinance is invalidated by a court of competent jurisdiction, all other parts shall remain in full force and effect unless otherwise lawfully repealed or amended.

Section 4: This ordinance shall take effect immediately upon passage on second reading, the public necessity requiring it.

PASSED ON FIRST READING: October 21, 2014

PASSED ON SECOND READING: November 18, 2014

DATE OF PUBLIC HEARING: November 18, 2014

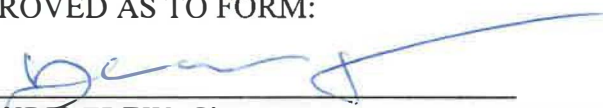


ANN S. DAVIS, Mayor



MITCHELL B. MOORE, City Manager

APPROVED AS TO FORM:



H. CHRIS TREW, City Attorney