

Chapter 27

VESTED RIGHTS DETERMINATION

ARTICLE 1 IN GENERAL

Sec. 1-1. Definitions.

Words and terms used in this Chapter shall be given the meanings set forth in this Section and this Code of Ordinances, and as defined in Sections 70.001, 70.051, 380.04, Florida Statutes. All words and terms not specifically defined herein shall be given their common, ordinary meanings, as the context may reasonably suggest.

Existing use shall mean an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the Subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

Inordinate burden or *inordinately burdened* shall mean that an action of the local governing body has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large. This definition shall not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this Chapter. However, a temporary impact on development, as defined in Section 380.04, Florida Statutes, that is in effect for longer than 1 year may, depending upon the circumstances, constitute an "inordinate burden" as provided in this paragraph.

Governmental entity shall include an agency of the state, a regional or local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority.

Act of a governmental entity shall mean a specific action of a governmental entity which affects real property, including action on an application or a permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.

Development as defined in Section 380.04, Florida Statutes.

Building permit shall mean an official document or certificate issued by the City, under the authority of ordinance or law, authorizing the construction or siting of any building, as defined in Section 21A-1, City Code of Ordinances.

Development permit shall mean a permit issued by the City under the authority of ordinance or law, authorizing the development of any property within City limits, as defined in Chapter 26, City Code of Ordinances.

Nonconforming use shall mean any actual and active use lawfully being made of any land, building, or structure not otherwise abandoned, which exists on the effective date of this Code or on the effective date of any amendment thereto, and renders such existing use illegal within a zoning district, or when the use does not comply with all of the conditions for uses and all the standards of

general applicability for uses that are provided in Chapter 26. If the property or structure is vacant or unused after 365 days from the effective date of this Code or any amendment thereto, it shall be conclusively presumed that the use of the property or structure is subject to the provisions of this Code or any amendments thereto.

Parcel/or zoning parcel shall mean any plot of land that has been assigned a "Parcel ID Number" by the Charlotte County Property Appraiser. A parcel may consist of one or more platted lots.

Development order shall mean any official and final determination regarding development as established by the City of Punta Gorda.

Vested rights determination shall mean the final written response which grants or denies vested rights, describes the vested rights of the development, reflects the basis for the vesting determination, the nature and extent of such vested rights and any restrictions or conditions thereon which are required to recognize and maintain such vested rights.

Staff report and recommendation shall mean the initial written response from the Development Review Committee containing their comments and recommendations regarding an application submitted under this Chapter.

Commission report and recommendation shall mean the written response from the Planning Commission, prepared by Urban Design staff, comprised of Commission comments and recommendations regarding an application submitted under this Chapter.

Applicant shall mean any property owner or authorized representative who submits a request for vested rights determination.

Development Approval shall mean any site plan, permit, zoning designation, or official authorization issued by the City upon which the applicant relies.

Sec. 1-2. Authority, intent and purpose.

The vested rights determination procedures are enacted pursuant to the authority and general powers conferred in the Constitution of the State of Florida, Chapters 163 and 166, Florida Statutes, and Chapter 26, City Code of Ordinances.

In recognition of the fact that certain land development rights of property owners may be vested with respect to certain provisions of the City of Punta Gorda Comprehensive Plan (Comprehensive Plan), and the Land Development Regulations (LDRs) contained in Chapter 26, City Code of Ordinances, this Chapter is intended to establish procedures and requirements for vested rights determinations, modifications to vested rights determinations, and appeals of vested rights determinations.

The purpose of this vested right determination is to establish a consistent, transparent, and equitable process for determining vested rights in real property, based on substantial reliance upon prior government action or applicable law, in accordance with the principles of due process and Florida law.

Sec. 1-3. Applicability.

Notwithstanding any other provision in the Comprehensive Plan and LDRs, a property which is determined to have vested rights pursuant to this Chapter shall be vested from the requirements of the Comprehensive Plan and LDRs but only to the extent expressly stated in the vested rights determination issued pursuant to this Chapter.

Sec. 1-4. Eligibility.

A property owner may seek a vested rights determination or modification of a vested rights determination subject to these conditions:

- (a) *Initial vested rights determination.* A property owner may seek an initial vested rights determination if:
 - (1) The act of a governmental entity has inordinately burdened or negatively impacted their ability to develop or use their property as previously approved by a development order, permit, or decision from the City's Urban Design and Building Divisions, land development regulations, and/or comprehensive plan; and
 - (2) The property owner has made substantial good-faith investments in reliance on prior approval, permit, or regulation issued by the City of Punta Gorda; and
 - (3) The property at issue had lawful entitlements at the time of the regulatory change.
- (b) *Expedited vested rights determination.* A property owner may seek an expedited vested rights determination if vested rights are asserted by virtue of:
 - (1) A valid court order from a court of competent jurisdiction; or
 - (2) A vested rights determination recently issued by the City of Punta Gorda, Florida; or
 - (3) A vested rights determination issued by the Florida Department of Community Affairs.
- (c) *Modification of vested rights determination.* A property owner may seek modification of a vested rights determination if:
 - (1) The act of a governmental entity results in a regulatory change that inordinately burdens or negatively impacts development on the subject real property as previously approved by an initial vested rights determination issued under this Chapter; or
 - (2) The property owner requests changes to a development permit as previously approved by an initial vested rights determination issued under this Chapter related to:
 - a. number of dwelling units;
 - b. utilities;
 - c. rights-of-way;
 - d. bicycle and pedestrian paths;
 - e. open space areas;
 - f. landscaped areas;
 - g. signs;
 - h. amenities;
 - i. applicable zoning or overlay districts;
 - j. setbacks;
 - k. building height;
 - l. parking; or
 - m. any change which materially affects the development of the entire unbuilt portion of the subject property.

ARTICLE 2 PROCEDURES

Sec. 2-1. Generally.

This Article shall set forth procedures for requesting a vested rights determination, an expedited vested rights determination, and any modifications or challenges to a vested rights determination, along with related fees and submission deadlines.

Sec. 2-2. Fees, deadlines for submission, and form of application.

- (a) *Application fees.* Applications pertaining to vested rights determinations shall be accompanied by reasonable, nonrefundable fees as set forth in the fee schedule as established and amended by resolution of the City Council:

Application Type	Nonrefundable Fee
Initial Vested Rights Determination	\$1,500.00
Expedited Vested Rights Determination	\$500.00
Modification to Vested Rights Determination	\$250.00

Fees payable under this subparagraph shall be due in full at the time of application submission and shall be used to cover the costs of administration, inspection, publication of notice, and similar matters related to application review.

- (b) *Application submission deadlines.* Any property owner claiming to have vested rights under this Chapter shall file an application for vested rights determination or modification subject to the submission deadlines set forth below:

Application Type	Submission Deadline
Initial Vested Rights Determination	Within (1) one year from the effective date of any repeal or of amendments to Chapter 26, Code of Ordinances
Expedited Vested Rights Determination	Within (1) one year from the effective date of any repeal of or amendments to Chapter 26, Code of Ordinances
Modification to Vested Rights Determination	Within 120 days from the effective date of any repeal of or amendments to material provisions of Chapter 26, Code of Ordinances, that serve as the basis of applicant's modification request

- (c) *Form of application.* A property owner seeking a vested rights determination or any modifications to a vested rights determination shall submit an application on a form provided by the City containing the following information and documentation:

- (1) *Initial vested rights determination.*
 - a. Legal description of the property, Including but not limited to address, and contact information for all parties that have an interest in the entity, ownership, etc.;
 - b. Description of the act of a governmental entity that has affected the use of real property at issue;
 - c. The provisions of the Comprehensive Plan and LDRs from which the applicant asserts the development is vested;

- d. Documentation of previous approvals, permits, entitlements, or regulations in reliance on which applicant made good-faith investments;
- e. Evidence of actions, investments, or other acts which the applicant asserts as the basis for a claim of vested rights; and
- f. Explanation of how the act of a governmental entity has unduly burdened or negatively impacted the use of real property at issue.

(2) *Expedited vested rights determination.*

- a. Legal description of the property, including but not limited to address, and contact information for all parties that have an interest in the entity, ownership, etc.;
- b. Description of the act of a governmental entity that has affected the use of real property at issue;
- c. The provisions of the Comprehensive Plan and LDRs from which the applicant asserts the development is vested;
- d. Documentation of eligible vested rights determination as set forth in Section 1-4(b) above; and
- e. Explanation of how the act of a governmental entity has unduly burdened or negatively impacted the use of real property at issue.

(3) *Modification to vested rights determination.*

- a. Legal description of the property, including, but not limited to address, and contact information for all parties that have an interest in the entity, ownership, etc.;
- b. Detailed description of the modification(s) requested based on eligible categories set forth in Section 1-4(c) above;
- c. The provisions of the Comprehensive Plan and LDRs from which the applicant asserts the modification(s) is vested;
- d. Evidence of actions, investments, or other acts which the applicant asserts as the basis for modification to a vested rights determination; and
- e. Explanation of how the act of a governmental entity has unduly burdened or negatively impacted the use of real property at issue, if applicable.

Sec. 2-3. Review and decision process; criteria; timeline.

- (a) *Levels of review.* The property owner shall submit a vested rights determination or modification of vested rights determination application to the Planning Director for initial review and recommendation by the City's Development Review Committee. If the Development Review Committee determines that a claim of vested rights has been established, the application and department recommendation will be submitted to the City's Planning Commission for secondary review and recommendation. If the Planning Commission supports the staff report and recommendation and finds that a claim of vested rights has been established, the application and both staff and Commission recommendations will be submitted to the City Council for public hearing and approval of the vested rights determination.
- (b) *Criteria for vested rights determination.* The following criteria shall be used to evaluate claims of vested rights:
 - (1) *Substantial good-faith investment.* Showing that the applicant has made significant financial or material commitments to development of the subject property based on prior approvals;
 - (2) *Reasonable reliance.* Showing that the applicant's investment was made in justifiable

reliance on regulations existing at the time of the prior development approvals;

- (3) *Governmental entity action impact.* Showing that an act of a governmental entity has inordinately burdened or negatively impacted the previously approved development; and
- (4) *Public interest consideration.* Showing that recognition of vested rights would not cause significant harm to public safety, health, or welfare.

(c) *Development Review Committee review.* Upon receipt of an application submitted under this Chapter, the Planning Director shall coordinate review of the application and attendant documentation with City staff, including but not limited to, the Zoning Official or his/her designee, the Building Official or his/her designee, City Attorney, the Urban Design Manager, and members of the Development Review Committee, to make a determination whether or not a claim of vested rights has been established pursuant to this Chapter.

- (1) *Initial vested rights.* If the Development Review Committee determines that a claim of vested rights has been established based on the criteria set forth under subparagraph (b) above, it shall, within sixty (60) days from the date of application submission, issue a staff report and recommendation which describes the vested rights of the development, reflects the basis for the vesting determination, and describes the nature and extent of such vested rights and any restrictions or conditions thereon which are recommended to require for recognition and maintenance of such vested rights status.

If the Development Review Committee determines that a claim of vested rights has not been established, it shall, within sixty (60) days from the date of application submission, issue a staff report which reflects the basis for the vesting determination, including description of which criteria under subparagraph (a.) above the application did not meet.

- a. *Incomplete or insufficient application.* If the Development Review Committee determines that an application for initial vested rights determination is incomplete or insufficient, it shall issue notice to the applicant indicating the areas of incompleteness or insufficiency within thirty (30) days from the date of application submission. Such notice may be accomplished by written correspondence sent via certified U.S. Mail, return receipt requested. If an incomplete or insufficient application remains outstanding pending applicant response for thirty (30) days following notice set forth in this paragraph, the application shall be deemed expired. The applicant may resubmit an application for vested rights determination subject to the fees and other requirements set forth in this Chapter.

- (2) *Expedited vested rights.* If the Development Review Committee determines that an expedited claim of vested rights has been established based on the criteria set forth under subparagraph (b) above, it shall, within forty-five (45) days from the date of application submission, issue a staff report and recommendation which describes the vested rights of the development, reflects the basis for the vesting determination, and describes the nature and extent of such vested rights and any restrictions or conditions thereon which are recommended to require for recognition and maintenance of such vested rights status.

If the Development Review Committee determines that a claim of vested rights has not been established, it shall, within forty-five (45) days from the date of application submission, issue a staff report which reflects the basis for the expedited vesting determination, including description of which criteria under subparagraph (b) above the application did not meet.

- a. *Incomplete or insufficient application.* If the Development Review Committee determines that an expedited application for vested rights determination is incomplete or insufficient, it shall issue notice to the applicant indicating the areas of incompleteness or insufficiency within twenty (20) days from the date of application submission. Such notice may be accomplished by written correspondence sent via certified U.S. Mail, return receipt requested. If an incomplete or insufficient application remains outstanding pending applicant response for twenty-five (25) days following notice set forth in this paragraph, the application shall be deemed expired. The applicant may resubmit an expedited application for vested rights determination subject to the fees and other requirements set forth in this Chapter.
- (3) *Modifications to vested rights determination.* If the Development Review Committee determines that requested eligible modifications to a vested rights determination are not contrary to any other provisions under the Comprehensive Plan and LDRs in effect at the time the vested rights were established, it shall, within thirty (30) days from the date of application submission, issue a staff report and recommendation which describes the modified vested rights of the development, reflects the basis for the modified vesting determination, and describes the nature and extent of such modified vested rights and any restrictions or conditions thereon which are recommended to require for recognition and maintenance of such modified vested rights status.

If the Development Review Committee determines that the requested modifications to a vested rights determination are contrary to any other provisions under the Comprehensive Plan and LDRs in effect at the time the vested rights were established, it shall, within thirty (30) days from the date of application submission, issue a staff report which reflects the basis for the modified vesting determination, including the description of any contrary provisions of the Comprehensive Plan and LDRs and the nature and extent to which the requested modifications contradict such provisions.

a. *Incomplete or insufficient application.* If the Development Review Committee determines that an application for modification to a vested rights determination is incomplete or insufficient, it shall issue notice to the applicant indicating the areas of incompleteness or insufficiency within fifteen (15) days from the date of application submission. Such notice may be accomplished by written correspondence sent via certified U.S. Mail, return receipt requested. If an incomplete or insufficient application remains outstanding pending applicant response for fifteen (15) days following notice set forth in this paragraph, the application shall be deemed expired. The applicant may resubmit an application for modification of vested rights determination subject to the fees and other requirements set forth in this Chapter.

Sec. 2-3. Denial of Vested Rights Determination and Appeal.

- (1) An applicant aggrieved by the City's determination may appeal to the City Council within thirty (30) days of the final determination. The City Council shall conduct a quasi-judicial hearing and issue a final decision.

ARTICLE 3 EFFECT AND ENFORCEMENT.

Sec. 3-1 A valid vested rights determination shall:

- (1) Be binding on the City as to the rights established therein;
- (2) Run with the land unless otherwise stated;
- (3) Be subject to any time limits, conditions, or expiration terms set forth in the decision.