

Ord. 34

ORDINANCE NO. 2019- 23

**CITY OF POMPANO BEACH
Broward County, Florida**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 155, "ZONING CODE," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES; BY AMENDING SECTION 155.2304., "STAFF REVIEW AND ACTION," TO SUBJECT APPLICATIONS FOR TAKING AND VESTED RIGHTS DETERMINATION TO STAFF DECISION; BY CREATING SECTION 155.2309., "REVIEW OF APPLICATIONS FOR PERMITS AND DEVELOPMENT ORDERS WITH REGARD TO ZONING IN PROGRESS," TO PROVIDE PROCEDURES FOR REVIEW OF PERMITS AND OTHER DEVELOPMENT APPLICATIONS AFFECTED BY PROPOSED CHANGES TO THE CITY'S ZONING CODE; BY CREATING SECTION 155.2429., "TAKINGS OR VESTED RIGHTS DETERMINATION," TO ESTABLISH A PROCEDURE AND STANDARDS FOR PROPERTY OWNERS DESIRING TO RETAIN CERTAIN RIGHTS FOLLOWING ZONING CODE CHANGES; BY AMENDING APPENDIX C: FEE SCHEDULE, TO PROVIDE AN APPLICATION FEE FOR TAKINGS OR VESTED RIGHTS DETERMINATION BY CITY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.2304., "Staff Review and Action," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 155.2304. STAFF REVIEW AND ACTION

...

D. APPLICATIONS SUBJECT TO STAFF DECISION

1. Decision

If an application is subject to ~~staff review and~~ a final decision by the staff (See Table 155.2304.D, Applications Subject to Staff Decision.), the Development Services Director shall approve the application, approve the application subject to conditions, or deny the application, based on the review standards set forth in Part 4 (Application-Specific Review Procedure) of this article, for the particular type of application.

TABLE 155.2304.D: APPLICATIONS SUBJECT TO STAFF DECISION
Minor Site Plan
Minor Building Design
Minor Certificate of Appropriateness
Tree Permit
Minor Temporary Use Permit
Zoning Compliance Permit
Zoning Use Certificate
Minor Administrative Adjustment
Interpretation
<u>Takings or Vested Rights Determination</u>

...

SECTION 2. That Section 155.2309., "Review of Applications for Permits and Development Orders with Regard to Zoning in Progress," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby created to read as follows:

§ 155.2309. REVIEW OF APPLICATIONS FOR PERMITS AND DEVELOPMENT ORDERS WITH REGARD TO ZONING IN PROGRESS

When the City Commission is considering either a text amendment to the city Zoning Code or a change of zoning district, applications for permits and development order(s), including zoning compliance permit(s) and zoning use certificate(s), shall not be accepted or issued when prospectively a text amendment or zoning district change, upon enactment by the City Commission, would result in the nonconforming or unlawful development or use of the subject property.

- A. Applications for permits and development orders including building applications, zoning compliance permits, zoning use certificates shall be deferred and held in abeyance beginning at the earlier of:
 - 1. The Planning and Zoning Board has held its initial public hearing on any text amendment or zoning district change; or
 - 2. Publication of a notice of a public hearing before the City Commission to consider a resolution declaring zoning in progress.

- B. Zoning in Progress shall not apply if:
 - 1. The Development Services Director has determined that approval of the application for a permit or development order would not result in the nonconforming or unlawful use of property in light of the proposed text amendment or zoning district change; or
 - 2. Six months have passed since the Zoning in Progress commenced pursuant to subsection A. above. The six months zoning in progress period may be extended for up to an additional three months by

resolution of the City Commission where the public interest requires such extension.

- C. Nothing in this section shall be construed or applied to abrogate the vested right of a property owner to complete development (See Section 155.2429.).
- D. An affected person may appeal the application of this provision to the Zoning Board of Appeals for review by filing an Appeal with the Development Services Director, in accordance with the procedures outlined in Section 155.2424., Appeals.

SECTION 3. That Section 155.2429., "Takings or Vested Rights Determination," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby created to read as follows:

§ 155.2429. TAKINGS OR VESTED RIGHTS DETERMINATION

A. PURPOSE

The purpose of this section is to establish a procedure and standards for the Development Services Director, or his/her designee, when the Code is amended and the property owner expresses a desire to retain certain rights.

B. APPLICABILITY

- 1. Nothing in this section shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:
 - a. A governmental act of development approval was obtained prior to the effective date of this section or prior to the effective date of an amendment to this section; and
 - b. The property owner has detrimentally relied upon a governmental act of development approval and made a substantial change in position or has incurred extensive obligations and expenses; and

- c. That it would be highly inequitable to deny the property owner the right to complete the development.
2. Except as provided by subsection 3 below, any property owner claiming to have vested rights under this Section must file an application with the Development Services Department for a vested rights determination within 30 days after Zoning in Progress is declared.
3. Any property owner demonstrating vested rights as prescribed under this section shall not be subject to Zoning in Progress and shall be authorized to apply for orders and permits in accordance with a Vested Rights Determination made by the City. A copy of the Vested Rights Determination shall be filed with the City Clerk.

C. PROCEDURE & DETERMINATION

1. Step 1: Pre-Application Conference

Not Applicable.

2. Step 2: Neighborhood Meeting

Not Applicable.

3. Step 3: Application Submittal and Acceptance

The application shall be accompanied by a fee and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation supporting the claim and any other documentary evidence required by the Director of Development Services or his/her designee or otherwise believed to support the claim.

4. Step 4: Staff Review and Action

Applicable to a final decision by the Development Services Director (See Section 155.2304.).

5. Step 5: Public Hearing Scheduling and Notice

Not Applicable.

6. Step 6: Advisory Body Review and Recommendation

Not Applicable.

7. Step 7: Decision-Making Body Review and Decision

Not applicable.

D. APPEAL

An affected person may appeal the final decision of the Development Services Director to the Zoning Board of Appeals by filing a Notice of Appeal and appeal application with the Development Services Director, in accordance with the procedures outlined in Section 155.2424., Appeals.

SECTION 4. That Appendix C: Fee Schedule of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

APPENDIX C: FEE SCHEDULE

The following are the applicable fees for Applications for Development in the city:

TYPE OF APPLICATION	FEE
...	...
II. OTHER DEVELOPMENT SERVICES APPLICATIONS	
...	...
P. Abandonments	
1. Right-of-way abandonments	\$1,1,195
<u>Q. Takings or Vested Rights Determination</u>	<u>\$600</u>

...

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 6. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 8th day of January, 2019.

PASSED SECOND READING this 22nd day of January, 2019.



REX HARDIN, MAYOR

ATTEST:



ASCELETA HAMMOND, CITY CLERK

:jrm
12/5/2018
L:ord/ch155/2019-38