

ORDINANCE NO. 09-12

INTRODUCED BY:

Councilperson Coppola

Councilperson Havercroft

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
AMENDING PROVISIONS OF THE ZONING ORDINANCE PREVIOUSLY ADOPTED
UNDER ORDINANCE NO. 08-04 CONCERNING VESTED PROPERTY RIGHTS AND
DEVELOPMENT AGREEMENTS AND DECLARING AN EMERGENCY**

WHEREAS, the City of Castle Pines North (the "City") is a statutory municipality incorporated and organized pursuant to the provisions of Section 31-2-101, et seq., C.R.S.; and

WHEREAS, in accordance with the authority under Title 31, Article 23 and its general police powers, the City Council enacted Ordinance No. 08-04 which adopted the Douglas County Zoning Resolution and associated Zoning Map as the City's Zoning Ordinance ("Zoning Ordinance"); and

WHEREAS, in furtherance of the public health, safety and welfare of the inhabitants of the City, the City Council desires to amend certain provisions of the Zoning Ordinance in order to amend the procedures to establish vested property rights in accordance with Article 68 of Title 24, C.R.S., as amended; and

WHEREAS, the City Council further desires to amend the Zoning Ordinance requirements for development agreements, as Section 35 of the Zoning Ordinance currently reflects Douglas County policies rather than City policies regarding development agreement negotiations and requirements; and

WHEREAS, the City Council conducted a duly noticed public hearing in accordance with Section 109 of the Zoning Ordinance; and

WHEREAS, the City Council finds that the repeal and reenactment of Sections 34 and 35 of the Zoning Ordinance will improve the City's administration, processing and review of vested property rights and development agreements; and

WHEREAS, the City Council finds that this Ordinance is necessary to the immediate preservation of the public health and safety in that the City has received and expects to receive land use applications that will request vested property rights and the adoption of this Ordinance will create clear processing, review and oversight of such vested property rights procedure; and

WHEREAS, the City Council finds that the passage of this Ordinance will promote and preserve the health, safety and welfare of the community.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Castle Pines North, Colorado:

Section 1. Section 34 of the Zoning Ordinance, titled *Vested Property Rights*, is hereby repealed and replaced in its entirety with the following:

3401 Intent

To provide procedures and standards for review and approval of a Site Specific Development Plan for the purpose of vesting property rights under the authority of Article 68 of Title 24, C.R.S., as amended.

To assure certain development rights while maintaining quality development, adequate infrastructure and maintaining the general health, safety and welfare of current and future Castle Pines North citizens and businesses.

3402 Criteria

Property rights may be vested by the City Council only upon the approval of a Site Specific Development Plan. A Planned Development, Final Plat, Development Agreement, Site Improvement Plan, or such other plan as the City Council may designate in an agreement entered into by the City and the landowner may be designated as a Site Specific Development Plan.

3402.01 Reserved.

3402.02 A minor change to an approved development or site plan, as determined by the Director, which has been designated as a Site Specific Development Plan shall not affect the terms and conditions of vesting as specified on the plan, and shall not extend the vesting period unless expressly authorized by City Council.

3403 Procedure

3403.01 An application for vested property rights may be submitted concurrently with an eligible development plan application or may be submitted within ninety (90) days of site plan approval or a vested property right shall not exist.

3403.02 Only the landowner or designated representative is permitted to apply for designation of a Site Specific Development Plan for the purpose of vesting property rights.

3403.03 Concurrent processing of the site plan and the Site Specific Development Plan shall be permitted with the approval of the Director or designee.

3403.04 The applicant shall submit the required information to the Castle Pines North Community Development Department. Once the submittal is determined complete, staff will notify the applicant of the hearing date.

3403.05 The applicant is responsible for publishing a notice in the newspaper, prior to the hearing in compliance with the public notice requirements herein.

3404 Public Notice Requirements

In calculating the time period for public notification, the day of posting or mailing shall be counted toward the total number of days required. The day of the hearing shall not be counted toward this total.

At least 14 days prior to the hearing before the City Council, the applicant shall:

- publish a notice in at least one publication of a newspaper of general circulation printed or published in whole or in part in the City; and
- provide a publisher's affidavit of said notice to the Castle Pines North Community Development Department prior to the hearing. The notice shall read:

**NOTICE OF PUBLIC HEARING BEFORE THE CITY COUNCIL
OF CASTLE PINES NORTH**

A public hearing will be held on (date) at (time), in the City Council Chambers at _____, Castle Pines North, CO, for a vesting of property rights. (Describe type and intensity of use.) The property is located approximately (distance and direction from nearest major intersection). For more information call the Castle Pines North Community Development Department at 303-705-0200.
File No./Name: _____

The degree of accuracy required for the information contained in these public notices shall be that of substantial compliance with the provisions of this section. Substantial compliance for these public notices shall be determined by the City Council.

3405 City Council Actions

- 3405.01 The City Council may approve, conditionally approve or deny the Site Specific Development Plan.
- 3405.02 The City Council may approve the Site Specific Development Plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. Such conditions may include:
- 3405.02.1 The applicant agrees to comply with area-wide regulations that may be promulgated following approval of the Site Specific Development Plan based upon reasons of public health, safety, and welfare.
- 3405.02.2 The applicant agrees that:
- (1) The information submitted with the development application was sufficient and reasonable to conclude that the subject property and its immediate vicinity are free of all natural or man-made hazards, or that the applicant has identified any such hazard and has taken such necessary measures to ensure that such hazard will not pose a serious threat to the public health, safety, or welfare;
 - (2) Subsequent discovery of any hazard which is not corrected by the applicant to the satisfaction of the City Council, and is determined by the City Council to pose a serious threat to the public health, safety, or welfare, shall render the Site Specific Development Plan void resulting in a forfeiture of vested property rights.
- 3405.03 Following approval or conditional approval of the Site Specific Development Plan, such plan may be subject to subsequent review and approval by the City to ensure compliance with the terms and conditions of the original approval. Failure to abide by such terms and conditions shall result in a forfeiture of vested property rights.

3406 Post Approval Action

Any approval shall be subject to judicial review. The period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication, in a legal newspaper of general circulation within the City, of a notice advising the general public of the Site Specific Development Plan approval and creation of a vested property right. Such publication shall be the responsibility of the applicant and shall occur no later than 14 days following approval. The applicant shall present to the Castle Pines North Community Development

Department an affidavit of publishing, within 15 days of publishing. Such notice shall read:

NOTICE

Notice is hereby given that on (date) the City Council of the City of Castle Pines North approved a site specific development plan for the property known as _____, located approximately (distance and direction from nearest major intersection), which approval has created a vested property right pursuant to Colorado law for a period of ____ years. (Describe type and intensity of use). Such approval is subject to all rights of judicial review and rights of referendum.

3407 Approval Rights

3407.01 Upon approval of a Site Specific Development Plan, the vested property right shall attach to and run with the property and shall confer upon the landowner the right to undertake and complete the development and the use of said property under the terms and conditions of the Site Specific Development Plan including any amendments and modifications thereto which have been approved by City Council.

3407.02 A vested right, once established as provided for herein, precludes any zoning or land-use action concerning the subject property by the City or pursuant to an initiated measure which would alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in a Site Specific Development Plan, except:

3407.02.1 With the consent of the affected landowner.

3407.02.2 Upon the discovery of a natural or man-made hazard on or in the immediate vicinity of the subject property, which could not reasonably have been discovered at the time of the Site Specific Development Plan approval, and which if uncorrected, would pose a serious threat to the public health, safety and welfare, or as provided in 3405.02.2 herein.

3407.02.3 To the extent that the affected landowner receives just compensation for all costs, expenses, and liabilities, incurred by the landowner, including financing and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the City, together with interest thereon at the legal rate until paid.

Just compensation shall not include any diminution on the value of the property, which is caused by such action.

- 3407.02.4 The establishment of a vested property right shall not preclude the application of ordinances or regulations which are general in nature and which are applicable to all properties or a similarly situated class of properties subject to land use regulation by the City, including but not limited to building, fire, plumbing, electrical, and mechanical codes, technical requirements and specifications for any public infrastructure or public facility improvements, drainage regulations, flood control, water quality, and regulations concerning subdivision improvements. The establishment of a vested property right shall not preclude the application of any legislatively adopted fees which are general in nature, uniform in character and applicable to all properties or a similarly situated class of properties.

3408 Vesting Period

In its legislative discretion, the City Council may extend vested property rights for a period exceeding three (3) years based on relevant circumstances, including, but not limited to: the size and phasing of the development, economic cycles, and market conditions.

3409 Jurisdiction

A vested property right approved by the City concerning all or part of the property included within a Site Specific Development Plan shall be effective against any other local government which may subsequently obtain or assert jurisdiction over such property.

3410 Judicial Determination

Nothing in this section shall preclude judicial determination, based on common law principles, that a vested property right exists in a particular case or that a compensable taking has occurred.

3411 Forfeiture of Vested Property Rights

- 3411.01 Failure to abide by the terms and conditions of a Site Specific Development Plan may result in a forfeiture of the vested property rights in accordance with the procedures set forth herein.
- 3411.02 The process to consider forfeiture of vested property rights shall be initiated by passage of a resolution by the City Council stating the grounds therefor.

- 3411.03 No vested property right shall be deemed forfeited until after providing notice and conducting a public hearing. Notice shall be provided by publishing notice in a newspaper of general circulation, posting notice in the designated official place(s) of posting, and mailing notice to the property owner(s) sent to the address of record according to the County Assessor's records via first class United States mail at least thirty (30) days prior to the date of a hearing. A copy of the resolution initiating the process to consider forfeiture of a vested property right shall be included with the mailed notice to the property owner.
- 3411.04 At the hearing, the City Council shall consider all evidence and testimony presented concerning any failure to abide by the terms and conditions of a Site Specific Development Plan. The City Council may continue the public hearing to allow additional evidence to be gathered and presented.
- 3411.05 If City Council finds a failure to abide by the terms and conditions of the Site Specific Development Plan, the City Council may take action by ordinance to declare the vested property rights forfeited. The forfeiture of a vested property right shall have no effect upon public streets, alleys, rights-of-way, or other lands or easements previously dedicated or conveyed to the City or other public entities pursuant to the terms of a Site Specific Development Plan. Upon forfeiture of vested property rights, the Site Specific Development Plan shall be subject to all zoning, land use, and general regulations in effect at the time of forfeiture and as such may be amended from time to time thereafter.

Section 2. Section 35 of the Zoning Ordinance, titled *Development Agreements*, is hereby repealed and replaced in its entirety with the following:

3501 Authority.

The City Council is authorized to enter into development agreements with property owners and applicants under the authorities granted by Article 20, Title 29; Article 23, Title 31 and Article 15, Title 31 of Colorado Revised Statutes. The form of development agreement shall be approved by the City Attorney and, except as otherwise agreed by the City, legal and administrative fees incurred by the City in processing a development agreement shall be borne by the property owner and/or applicant.

Severability. Should any one or more sections or provisions of this Ordinance or of any of the primary or secondary codes adopted by reference be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or the codes adopted by reference hereby, the intention being that the various sections and provisions are severable.

Repeal of Previous Ordinances. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

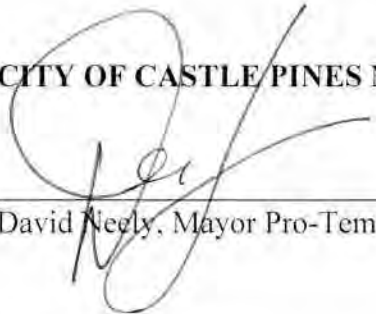
Emergency Declared. The City Council finds that this Ordinance is necessary to the immediate preservation of the public health and safety in that the City has received and expects to receive land use applications that will request vested property rights and will require negotiated development agreements and the adoption of this Ordinance will create clear processing, review and oversight of such procedures.

Effective Date. This Ordinance shall become immediately upon adoption following second reading in accordance with C.R.S., § 31-16-105.

INTRODUCED, READ, AND PASSED, ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO the 13th day of August, 2009.

READ, PASSED, AND ADOPTED ON SECOND READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO the 10th day of September, 2009.

CITY OF CASTLE PINES NORTH:



David Neely, Mayor Pro-Tem

ATTEST:



Janie Berry, City Clerk

Approved as to form:



Linda C. Michow, City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading at a regular meeting of the Castle Pines North City Council on August 13, 2009; published in full in the *Douglas County News-Press*; and finally passed and adopted by the City Council on September 10, 2009 following a duly notice public meeting and ordered published by title only, with amendments if any, one time in the *Douglas County News-Press* on September 24, 2009.

ATTEST:



Janie Berry, City Clerk

