

CHAPTER 17.53
VESTED PROPERTY RIGHTS

SECTIONS:

17.53.010	Purpose
17.53.020	Definitions
17.53.030	Applications; Approval by the City
17.53.040	Establishment of Vested Property Rights; Public Notice and Hearing Required
17.53.050	Approval of Site Specific Development Plan; Conditions
17.53.060	Duration and Termination of Vested Property Rights
17.53.070	Waiver of Vested Property Rights
17.53.080	Subsequent Regulation Prohibited; Exceptions
17.53.090	Payment of Costs
17.53.100	Other Provisions Unaffected
17.53.110	Limitations

17.53.010 PURPOSE.

The purpose of this Chapter is to provide the procedures necessary to implement the provisions of Article 68 of Title 24, Colorado Revised Statutes, as amended, which establishes a vested property right to undertake and complete development and use of real property under the terms and conditions of a site specific development plan, and to establish local control over creation of vested real property rights to the fullest extent permitted by law.

17.53.020 DEFINITIONS.

The following definitions are for the purposes of administration of this Chapter only and do not apply to other sections of this Code. Unless modified in this Section, the terms used in this Chapter shall have the same meaning as set forth in Section 24-68-102, C.R.S.

- A. A "site specific development plan" means a plan that has been submitted to the city by a landowner or such landowner's representative describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property, which plan shall create a vested property right if the landowner wishes said approval to have the effect of creating vested rights. The landowner must request vested rights approval in writing at the time a land development application is submitted. The following shall be considered "site specific development plans":

Table 17.53.020.A	
DEVELOPMENT REVIEW PROCEDURE	SITE SPECIFIC DEVELOPMENT PLAN
1. Site Design Review pursuant to Section 17.09.020	Site Design Review as approved Administratively
2. Minor Subdivisions pursuant to Chapter 17.21.	Subdivision final plat as approved Administratively
3. Major Subdivisions pursuant to Chapter 17.21.	Subdivision final plat as approved Administratively
4. Planned Unit Development (PUD), not accompanied by subdivision of land pursuant to Chapter 17.19.	Final PUD Plan, any applicable PUD Guide approved by City Council AND the applicable development agreement
5. Planned Unit Development (PUD) pursuant to Chapter 17.19, accompanied by subdivision of land pursuant to Chapter 17.21.	Subdivision final plat together with Final PUD Plan, PUD Guide as approved by City Council AND any applicable development agreement

If not indicated above, a "site specific development plan" shall mean the final approval step, irrespective of the name or designation of such approval, which occurs prior to a Planning Clearance application.

Provided however, the City Council may, by agreement with the applicant, designate an approval step other than those indicated above, or the final approval step, to serve as the "site specific development plan" approval for a specific project.

The following are specifically excluded from, and shall not constitute, a "site specific development plan": variances, subdivision Sketch Plans, subdivision Preliminary Plans, PUD Concept Plans, PUD Preliminary Plans, business licenses, floodway or floodplain permits, franchises, temporary use permits, any Master Plan element, creation of improvement districts, zoning, rezoning other than Planned Unit Developments, final architectural plans, or final construction drawings and related documents specifying materials and methods for construction of improvements.

B. "Vested property right" means the right to undertake and complete development and use

of property under the terms and conditions of a "site specific development plan."

17.53.030 APPLICATIONS: APPROVAL BY THE CITY.

- A. Except as otherwise provided in this Section, an application for approval of a "site specific development plan" as well as the approval, conditional approval, or denial of approval of a plan shall be governed only by the duly adopted laws and regulations in effect at the time the application is submitted to the city. For purposes of this Section, "laws and regulations" includes any zoning, development, or land use law of general applicability adopted by the city as well as any zoning, development or land use regulations that have previously been adopted for the particular parcel described in the plan and that remain in effect at the time of application for approval of the plan. In the event the application for a "site specific development plan" requires review and approval in multiple stages, "application" means the original application submitted at the first stage in any multi-stage process that may culminate in the ultimate approval of a "site specific development plan."

- B. Notwithstanding the limitations contained in subsection (A) above, the city may adopt a new or amended law or regulation when necessary for the immediate preservation of public health and safety and may enforce such law or regulation in relation to applications for "site specific development plans" pending at the time such law or regulation is adopted.

17.53.040 ESTABLISHMENT OF VESTED PROPERTY RIGHTS; PUBLIC NOTICE AND HEARING REQUIRED.

A vested property right shall be deemed established with respect to any property upon the approval, or conditional approval, of a "site specific development plan". A vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the "site specific development plan", as approved, including any amendments thereto. A "site specific development plan" shall be deemed approved upon the effective date of the city's legal action, resolution or ordinance relating thereto. Such approval shall be subject to all rights of referendum and judicial review; except that 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 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 pursuant to this Chapter. Such publication shall occur no later than fourteen (14) days following approval.

17.53.050 APPROVAL OF SITE SPECIFIC DEVELOPMENT PLAN; CONDITIONS.

- A. The city may approve a "site specific development plan" upon such terms and

conditions as may reasonably be necessary to protect the public health, safety and welfare, and failure to abide by such terms and conditions, at the option of the City Council following a public hearing, shall result in the forfeiture of vested property rights. This subsection shall be strictly construed.

- B. Terms and conditions imposed or agreed upon may include, without limitation:
1. Future approvals by the city not inconsistent with the original approval;
 2. Approvals by other agencies or other governments;
 3. Satisfactory inspections;
 4. Completion of all or certain phases or filings of a project by certain dates;
 5. Waivers of certain rights;
 6. Completion and satisfactory review of studies and reports;
 7. Payment of fees to the city or other governmental or quasi- governmental agencies as they become due and payable;
 8. Payment of costs and expenses incurred by the city relating to the review and approval;
 9. Continuing review and supervision of the plan and its implementation and development;
 10. Obtaining and paying for planning clearances, building permits, water plant investment fees (taps) and wastewater plant investment fees (taps);
 11. Compliance with other codes and laws, including building codes, of general applicability;
 12. Construction of on-site or off-site improvements or facilities for the use of future inhabitants or the public at large;
 13. Payment of any applicable impact fees; and
 14. Dedication or conveyance of public site or parkland, trails, school land, common area or open spaces, with provision for its maintenance; or payment of a fee in lieu thereof, and dedication of necessary easements and rights-of-way.

17.53.060 DURATION AND TERMINATION OF VESTED PROPERTY RIGHTS.

- A. A property right, which has been vested pursuant to this Chapter, shall remain

- B. vested for a period of three (3) years. This vesting period shall not be extended by any amendments to a "site specific development plan" unless expressly authorized by the City Council.
- C. Notwithstanding the provisions of subsection (A) above, the City is authorized to enter into development agreements with landowners providing that property rights shall be vested for a period exceeding three (3) years where warranted in the light of all relevant circumstances including, but not limited to, the size and phasing of the development, economic cycles, and market conditions. Such development agreements shall be adopted as legislative acts subject to referendum.
- D. Following approval or conditional approval of a "site specific development plan", nothing contained in this Chapter shall exempt such a plan from subsequent reviews and approvals by the city to insure compliance with the terms and conditions of the original approval, if such further reviews and approvals are not inconsistent with said original approval. The Community Development Director shall make this determination.
- E. The failure of a developer to abide by the terms and conditions contained in a development agreement, site-specific development plan, development agreement, final PUD development plan agreement, annexation agreement, or the provisions of this section shall result in the forfeiture of vested property rights for the subject property.

17.53.070 WAIVER OF VESTED PROPERTY RIGHTS.

An applicant may waive a vested property right by separate written agreement, which shall be recorded in the office of the Mesa County Clerk and Recorder. Unless otherwise agreed to by the City Council, any landowner requesting annexation to the City of Fruita shall waive in writing any pre-existing vested property rights as a condition of such annexation.

17.53.080 SUBSEQUENT REGULATION PROHIBITED; EXCEPTIONS.

- A. A vested property right, once established as provided in this Chapter, precludes any zoning or other land use action by the city or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in an approved "site specific development plan," except:
 - 1. With the consent of the affected landowner;
 - 2. Upon the discovery of natural or manmade hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of "site specific development plan" approval, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; or
 - 3. To the extent that the affected landowner receives just compensation for all costs, expenses and liabilities incurred by the landowner after approval by the city,

including, but not limited to, costs incurred in preparing the site for development consistent with the "site specific development plan", all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultants' fees, together with interest thereon at the legal rate until paid. Just compensation shall not include any diminution in the value of the property, which is caused by such action.

- B. Establishment of a vested property right pursuant to law shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the City of Fruita, including, but not limited to, building, fire, plumbing, electrical, housing, mechanical, and dangerous building codes.

17.53.090 PAYMENT OF COSTS. In addition to any and all other fees and charges imposed by this Title, the applicant for approval of a "site specific development plan" shall pay all costs incurred by the city as a result of the "site specific development plan" review and approval, including publication of notices, public hearing and review costs, when such costs are incurred apart and in addition to costs otherwise incurred by the city or applicant for a public hearing relative to the subject property.

17.53.100 OTHER PROVISIONS UNAFFECTED. Approval of a "site specific development plan" shall not constitute an exemption from or waiver of any other provisions of this Title pertaining to the development and use of property.

17.53.110 LIMITATIONS. Nothing in this Chapter is intended to create any vested property right, but only to implement Article 68 of Title 24, C.R.S., as amended. In the event of the repeal of said Article or judicial determination that said Article is invalid or unconstitutional, this Chapter shall be deemed to be repealed and the provisions hereof no longer effective.