

## **ARTICLE IX. Vested Rights**

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### **1. When Development Rights are Vested**

This vested rights section provides the procedures necessary to implement the provisions of Article 68 of Title 24, C.R.S., which establishes a vested property right to undertake and complete development of real property under the terms and conditions of a Site Specific Development Plan (hereinafter SSDP). No vested rights shall be created within the Town of Empire except through a SSDP.

#### **1.1 Definition of Site Specific Development Plan**

An SSDP within the Town of Empire may be established at the final approval of a development by the Town, which occurs prior to a building permit application. If a landowner wishes the approval of any of the following plans to have the effect of creating vested property rights pursuant to state law, the landowner must so request at least 20 days prior to the date said approval is to be considered and pay the applicable fee. Failure to request approval of an SSDP and pay the fee renders the approval not an "SSDP," and no vested rights shall be deemed to have been created. The Town may not approve an SSDP prior to the approval of any of the following; however, an SSDP may be approved concurrently with the following plan approvals.

1.1.1 For all property zoned PD under the Empire Development Code, a Final Development Plan described in this ordinance.

1.1.2 For all other properties within the Town of Empire, the Final Plat for single-family detached residents defined in this ordinance.

1.1.3 An approved Site Development Plan (SDP).

#### **1.2 Notice and Hearing**

No SSDP shall be approved until after public notice and a public hearing, in accordance with Article III, Section 7, before the Town Board of Trustees.

#### **1.3 Approval-Conditions**

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An SSDP shall be deemed approved upon the effective date of the action of the Town Board. The approval of the Board shall be accompanied by any terms or conditions imposed on the SSDP.

**1.4 An Approved Site Plan for a Special or Conditional Use Permit.**

Notwithstanding anything above to the contrary, an SSDP may be defined in a development agreement between the Town and the landowner to supersede some or all of the requirements of this ordinance.

**2. Waiver or Forfeiture of Vested Rights**

- 2.1** Failure to abide by any terms or conditions of the approval of any SSDP imposed by the Town shall constitute forfeiture by the landowner of any vested right created by the Plan unless otherwise specifically agreed by the Town of Empire in writing.
- 2.2** Any petition for annexation to the Town of Empire shall describe all vested property rights approved by any local government in effect at the time of the petition, if any, and be accompanied by all SSDPs approved by any local government. Failure to so identify any previously approved vested property right and provide all approved SSDPs shall constitute a waiver of the vested right(s) created by any other local government upon annexation to the Town of Empire unless specifically provided otherwise in this ordinance of annexation adopted by the Town of Empire.
- 2.3** The landowner shall be required to include with any plan submitted for approval as an SSDP notice of any natural or manmade hazards on or in the immediate vicinity of the subject property which are known to the landowner or could reasonably be discovered at the time of submission of the plan. Should a hazard on or in the immediate vicinity of the property be discovered subsequent to the approval of a SSDP which would impose a serious threat to the public health, safety, and welfare and is not corrected by the landowner, the vested property right created by such SSDP shall be forfeited by the landowner.
- 2.4** An SSDP submitted by a landowner and approved by the Town of Empire forfeits any pre-existing vested rights for the property.
- 2.5** Failure of the landowner to publish the notice required by 2.6 below constitutes a waiver by the landowner of the vested right created by the approval of the SSDP.

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- 2.6 Each SSDP, upon approval by the Town of Empire, shall contain a statement as follows:  
"This plan constitutes a site specific development plan as defined in § 24-68-101, et seq., C.R.S. and Article IX of the Town of Empire Land Development Code." [and, if applicable] "The terms and conditions of such approval are contained in Resolution/ordinance No. \_\_\_\_ adopted by the Town on \_\_\_\_\_ and available at the Empire Town Hall, \_\_\_\_\_, Empire, Colorado." In addition, a notice describing the type and intensity of use proposed, the specific parcel or parcels of property affected, the terms and conditions of any approval and stating that a vested property right pursuant to Article 68 of Title 24, C.R.S., has been created shall be published once, no later than 14 days after approval of the SSDP, in a newspaper of general circulation within the Town of Empire, at the expense of the landowner. The period of time permitted by law for the exercise of a vested right shall not begin to run until the date of such publication. Failure to publish this notice constitutes a forfeiture of the vested right.

### 3. Duration

A property right which is vested as provided herein shall be vested for a period of three (3) years from the date of approval of the SSDP upon compliance with all terms and conditions of such approval. This vesting period shall not be extended by any amendments to the SSDP, unless expressly authorized in writing by the Town Board.

### 4. Subsequent Regulation Prohibited

Any vested property right, once established, shall not be subject to any zoning or land use action by the Town of Empire or by petition by third parties to the Town of Empire which would alter, prevent, or otherwise delay the development or use of the property as set forth in an approved vesting plan, with the following exceptions:

- 4.1 With the consent of the affected landowner;
- 4.2 Upon the discovery of natural or man-made hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of vesting plan approval, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; or

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## 5. Extension and Amendments

No extension or amendment of the vesting period or the rights that are vested shall be granted unless the Board of Trustees, following a public hearing, approves such extension or amendment. Such request for extension or amendment shall be filed by the landowner together with all materials and fees required by this ordinance to be submitted for original approval. The Board of Trustees shall grant no extension for a period greater than one (1) year. Vested rights amendments shall be the same as the original or the extension in terms of duration.

## 6. Other Provisions

### 6.1 Other Requirements Remain

Approval of an SSDP shall not constitute an exemption from or waiver of any other provisions or requirements of the Town of Empire pertaining to the development and use of the property adopted or applicable before or after the approval of an SSDP.

### 6.2 Limitations

Nothing in this section is intended to create a vested property right, but only to implement the provisions of 24-68-101, et seq., C.R.S. In the event of a repeal of said statute or a judicial determination invalidating or declaring unconstitutional part or all of said statute, this section shall be deemed repealed and the provisions hereof no longer effective, or in the event only a portion of said statute is declared void or unconstitutional, then the portion of this section corresponding thereto shall be deemed repealed and no longer effective.

### 6.3 Development Agreement

Nothing herein shall be construed to limit the authority of the Town of Empire and a landowner to enter into a development agreement vesting property rights in the landowner. Such agreement shall be construed in accordance with the terms and conditions of said agreement and not be limited or expanded by the provisions of this ordinance.

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