

TOP NOTCH CITY

ORDINANCE No. 2006-_____

GRANDFATHERED DEVELOPMENT STATUS

AN ORDINANCE AMENDING VOLUME 2, ARTICLE 15, CHAPTER 21, OF THE TOP NOTCH CODE OF ORDINANCES; ESTABLISHING STANDARDS AND PROCEDURES FOR ASSERTION, ESTABLISHMENT, DETERMINATION, AND RECOGNITION OF POTENTIAL GRANDFATHERED DEVELOPMENT STATUS CLAIMS PURSUANT TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 245; AND PROVIDING FOR FINDINGS OF FACT; ENACTMENT; REPEALER; SEVERABILITY; CODIFICATION; EFFECTIVE DATE; PROPER NOTICE AND HEARING

- WHEREAS**, the City Council of the City of Top Notch (“City Council”) seeks to promote orderly, safe and reasonable development of land within the city limits and extraterritorial jurisdiction (“ETJ”); and
- WHEREAS**, the City Council supports the rights of private property owners and advocates clarity, predictability, and efficiency in the City’s regulatory program; and
- WHEREAS**, generally, the right to develop property is subject to intervening regulations or regulatory changes; and
- WHEREAS**, the Texas Legislature altered the general rule, through adoption of Chapter 245, Texas Local Government Code (“LGC 245” or “Chapter 245”), by requiring that each permit in a series of permits required for a development project be subject to only the regulations in effect at the time of the application for the project’s first permit, and not any intervening regulations; and
- WHEREAS**, the City Council strives to reduce instances of regulatory ambiguity, and provide applicants with an increased level of certainty and predictability as to what rules will govern which phases of development projects; and
- WHEREAS**, the owners and developers of projects who have diligently pursued completion of the same should not be subjected to new regulations that substantively and substantially alter how the project can be built; and
- WHEREAS**, the City Council finds that dormant, out-dated, and stagnant projects pose a

substantial harm to preservation of the Edwards Aquifer and native environment as well as to traffic safety and human health; and

WHEREAS, the City Council favors the development of construction projects in accordance with modern standards and state of the art technology; and

WHEREAS, in an effort to utilize advancements in technology, science, planning techniques, public policy, and the law, the City Council has expended considerable resources to enact new land development regulations with the assistance of an experienced municipal staff and professional land planners, engineers, and attorneys; and

WHEREAS, the City Council seeks to apply up-to-date regulatory systems to projects to the extent reasonably possible and within the confines of the law; and

WHEREAS, the determination of whether a particular project has changed so as to lose the protections granted by LGC 245 is a question that must be resolved by the City, which is the local regulatory agency; and

WHEREAS, pursuant to Chapter 245 of the Texas Local Government Code, the Texas Legislature limited the scope of rules that may be made applicable to certain development projects; and

WHEREAS, the City Council intends the provisions of this Ordinance to supplement LGC 245 and provide guidelines for the application and interpretation of Chapter 245; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Local Government Code Section 211.006(a), the City Council has the authority to establish procedures for enforcing its zoning regulations and boundaries; and

WHEREAS, pursuant to Texas Local Government Code Section 212.002, the City Council has the authority to establish rules governing plats and subdivisions of land; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of Top Notch City to adopt an ordinance establishing a framework within which property owners and the City can determine what projects have obtained Grandfathered Development Status under certain regulations.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Top Notch:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

Volume 2, Article 15, Chapter 21 of the City of Top Notch Code of Ordinances is hereby amended so to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance. To the extent to which any provision of this Ordinance conflicts with Chapter 245 of the Texas Local Government Code, Chapter 245 shall govern.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED this, the 10th day of January 2006, by a vote of ___ (ayes) to ___ (nays) to ___ (abstentions) of the City Council of Top Notch, Texas.

CITY OF TOP NOTCH

by: _____
Mayor

ATTEST:

by: _____
City Secretary

APPROVED AS TO FORM:
City Attorney

VOLUME: 2

ARTICLE 15: DEVELOPMENT

CHAPTER 21: GRANDFATHERED STATUS

SECTION 1. ENACTMENT PROVISIONS

1.1. Popular Name

This Chapter shall be commonly cited as the “Grandfathered Development Status Ordinance.”

1.2. Introduction

Texas Local Government Code Chapter 245 (“LGC 245”), sometimes referred to as the State’s “Freeze Law,” provides an opportunity for landowners or developers to “lock-in” certain government regulations that apply to a particular development by filing a specific permit application. Other laws, such as Sections 43.002 and 211.016 of the Texas Local Government Code, also convey certain “grandfathered” status.

1.3. Purpose

This Chapter provides standards and procedures for municipal determination of the alleged Grandfathered Development Status of development projects. Specifically, this Chapter is enacted to:

- (a) provide increased certainty and predictability in the City’s regulatory process; and
- (b) guarantee that all Grandfathered Development Status determinations are made by the City only after the City is in receipt of all necessary information; and
- (c) provide a method of administrative review of Grandfathered Development Status project decisions in accordance with LGC 245 or other applicable vesting laws; and
- (d) ensure that the City recognizes and protects all Grandfathered Development Status projects created by LGC 245.

1.4. Scope

1.4.1. This Chapter applies to the City Limits and the ETJ.

1.4.2. This Chapter shall only govern applications and permits covered by LGC 245.

1.4.3. This Chapter shall not apply to permits or regulations listed as exemptions in LGC 245.004.

1.4.4. This Chapter shall only govern situations involving a land use or development project for which the owner or builder requests City approval(s), yet seeks to avoid the application of current municipal regulations by asserting Grandfathered Development Status, as provided by LGC 245.

1.4.5. This Chapter shall not create any property rights in any application, project, property, or person. This Chapter shall not enlarge or expand any property right

granted by LGC 245.

1.5. Policy

There shall be a bias in the City of Top Notch against dormant or new land development projects being constructed pursuant to outdated regulations previously repealed by the City Council. It is the preferred policy of the City of Top Notch that all land development projects, for which municipal permits and approvals are needed, be constructed in accordance with current municipal regulations. Limited exceptions to this general rule shall be allowed when mandated by state law, as procedurally implemented through this Chapter.

SECTION 2. DEFINITIONS

2.1. General

Words and phrases used in this Chapter shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

2.2. Specific

Applicant: A person or entity who submits to the City an application for an approval required by the City. To be qualified as an Applicant under this Chapter, the person or entity must have sufficient legal authority or proprietary interests in the land to commence and maintain proceedings under this Chapter. The term shall be restricted to include only the Property Owner(s), or a duly authorized agent and representative of the Property Owner. In other jurisdictions, the term is sometimes referred to as the "developer", "subdivider", "builder," or other similar title.

Application for a Permit: The term as referenced in Texas Local Government Code Chapter 245, as may be amended. The term does not include an application to rezone property.

Board of Adjustment: A citizen's commission appointed by the City Council to perform the functions established by Texas Local Government Code Chapter 211, and other duties assigned by ordinance. As the governing body of a Type A General Law Municipality, the City Council is statutorily authorized to perform this function and serve in this

capacity.

City: The City of Top Notch, an incorporated municipality located in Happy County, Texas.

City Administrator: The City's chief administrative officer, as appointed by the City Council. The term also includes the Deputy City Administrator or the City Administrator's designee.

City Attorney: The individual or law firm appointed by the City Council to render legal services and advice in relation to the administration, interpretation, and enforcement of this Chapter.

City Engineer: The individual or entity appointed by the City Council to render engineering services to the City.

City Limits: The incorporated municipal boundaries of the City of Top Notch.

Development Coordinator: The individual or entity appointed by the City Council to administer land development ordinances and advise the City in relation to the administration, interpretation, and enforcement of the City's Development Code.

Development Review Committee: A group consisting of the Deputy City Administrator, Development Coordinator, City Engineer, and City Attorney.

ETJ: The extraterritorial jurisdiction of the City of Top Notch.

Grandfathered Development Status: A recognition by the City of an applicant's ability to process permit applications under pre-existing regulations in accordance with LGC 245.

LGC: The Texas Local Government Code.

New Project: A land development endeavor over which the City's municipal regulatory jurisdiction exists, that has not previously been formally considered or approved by the City, and for which one or more permits are required to initiate, continue or complete the endeavor. The term can refer to substantial changes made to an otherwise prior project.

Permit: The term as defined by Texas Local Government Code Chapter 245, as may be amended.

Project: The term as defined by Texas Local Government Code Chapter 245, as may be amended. The term refers to a specific property use and/or improvement undertaken on a

particular tract of land as documented in a manner that provides the City with fair notice.

SECTION 3. ADMINISTRATION

3.1. Submission

- 3.1.1.** An Applicant seeking Grandfathered Development Status with the City in accordance with LGC 245 shall submit to the Development Coordinator a letter explaining the factual and legal bases upon which the Applicant relies.
- 3.1.2.** The Development Coordinator may prescribe a form application.
- 3.1.3.** Such written submission shall include the following:
- (a) The name, mailing address, phone number and fax number of the Applicant;
 - (b) The name, mailing address, phone number and fax number of the Property Owner, if different than the Applicant;
 - (c) Identification of the property for which the Applicant claims Grandfathered Development Status, including a clear legal description of the exact boundaries of the property encompassed by the project;
 - (d) Identification of the “project,” as that term is defined in LGC § 245.001(3), as may be amended;
 - (e) Narrative description of the proposed land use(s) for the project;
 - (f) Layout of the site, including locations of buildings, streets, utilities and drainage facilities;
 - (g) Identification of the original application for the first permit in the series of permits required for the project, as described in LGC § 245.001(1) and § 245.002(a) and (b), as may be amended;
 - (h) The date that the first permit in the series of permits required for the project was filed with the City;
 - (i) A chronology of the history of the project, with special emphasis on facts establishing that the project was in progress on or commenced after September 1, 1997, as required by LGC 245 at § 245.003, as may be amended;

- (j) Identification of each Top Notch regulation in effect at the time the original application for the permit was filed that applies to the project and:
 - (1) the Applicant contends is grandfathered; and
 - (2) the Applicant contends controls the approval, disapproval, or conditional approval of an application for a permit, pursuant to LGC 245 at § 245.002(a) and (b), as may be amended;
- (k) Identification of each Top Notch regulation for which the applicant seeks an exemption due to the grandfathered development status provided the property owner by LGC 245 or other applicable vesting laws;
- (l) Explanation of applicability of any approval expirations and related requests for extension of approvals; and
- (m) Any other information deemed necessary by the Development Coordinator and requested in writing ..
- (n) Notwithstanding the above, an Applicant may subsequently seek Grandfathered Development Status for other regulations once an initial determination has been made by the City.

3.1.4. If an Applicant contends that certain City regulations do not apply to the project, the Applicant is expected to identify, with particularity, all requirements that the Applicant contends do not apply to the current application. Global references to a particular ordinance, or set of criteria, may be deemed insufficient and the City may consider the request for Grandfathered Development Status determination to be incomplete and, hence, not subject to a staff determination at that time.

3.1.5. The Applicant is responsible for demonstrating to the City that the project for which approval is sought is the same project for which Grandfathered Development Status attached.

3.1.6. An application for recognition of Grandfathered Development Status shall not be considered to have been filed with the City, for purposes of this Chapter or LGC 245, until such time as the application is administratively complete. In order to be administratively complete, the application must:

- (a) contain all materials required by this Chapter;
- (b) be presented within the time specified by this Chapter; and
- (c) be accompanied by a check payable to the City for the full amount of the application review fee established by the City Council, as codified in the City's Fee Schedule.

3.2. Determination

- 3.2.1. The Development Coordinator shall promptly forward the Application for Grandfathered Development Status, along with any supporting information or documentation provided, to the Development Review Committee for review.
- 3.2.2. The Development Review Committee shall make a written response within twenty-one days (21) after an Application for Determination of Grandfathered Development Status has been filed. If the Committee does not provide a written response to the Applicant within twenty-one (21) days after the application was filed, the application is automatically denied. The Development Coordinator may extend the time period established by this section upon receipt of a written request from the Applicant.
- 3.2.3. The Committee shall issue a written administrative determination approving the application, disapproving the application, or requesting additional information from the Applicant. If the application is approved, the determination shall identify, with particularity, which claims for Grandfathered Development Status have been recognized and which claims have been rejected.
- 3.2.4. Prior to rendering a determination, the City or the Applicant may request a pre-determination conference to discuss the owner's claim and to ensure that the nature of the claim is fully and completely understood prior to a determination being rendered. The Development Coordinator and/or the Development Review Committee may participate.
- 3.2.5. A determination recognizing Grandfathered Development Status shall state the date the application for the original permit was filed.
- 3.2.6. The Development Coordinator is signatory and spokesperson for the Development Review Committee.

3.3. Analysis

- 3.3.2. **Applicable Regulations.** The City shall consider the approval, disapproval, or conditional approval of an application for a permit covered by LGC 245 solely on the basis of any municipal regulations in effect at the time the original application for the permit is filed, with the exception of those exemptions listed in LGC 245, as may be amended.
 - (a) The extent and scope of what constitutes a project for purposes of this Chapter and LGC 245 shall be determined by the City based upon the information

provided by the Applicant and those documents filed among the City's records.

- (b) The City shall not bestow any form of Grandfathered Development Status on a hypothetical undertaking that is not expressly illustrated or demonstrated to the City at the time of submission of a completed application for a permit.
- (c) Endeavors not submitted for consideration by the Applicant to the City when a prior permit application for a project was filed with the City shall be considered new projects subject to the current regulations. The burden rests on the Applicant to establish that the project for which approval is sought is the same project to which Grandfathered Development Status allegedly attached.

3.4. Substantial Change. A substantial change to a project denies the City, and the public, of fair notice. Consequently, a substantial change results in a new project for which Grandfathered Development Status shall be denied. Factors that can result in a new project determination include, but are not limited to, the following modifications:

- (a) gross surface area or acreage; or
- (b) gross floor area; or
- (c) gross number of buildings; or
- (d) density; or
- (e) living unit equivalents; or
- (f) land use classification; or
- (g) impervious cover; or
- (h) drainage pattern or volumes; or
- (i) street layouts; or
- (j) additional curb cuts or driveways; or
- (k) orientation of buildings.

3.5. Minor Change. A minor change does not deprive the City of fair notice regarding the project. Minor changes are those typically necessary to address unanticipated situations that arise during site development or construction. Minor changes do not materially alter the public's prior understanding of the project. Factors that may be considered minor,

and thus do not prevent the recognition of Grandfathered Development Status, might include but are not limited to the following modifications:

- (a) relocation of lot lines; or
- (b) realignment of streets, driveways, curb cuts and easements; or
- (c) change of use within range of those permitted in same land use classification; or
- (d) modification of building footprint.

3.6. Reconsideration

3.6.1. If any person believes that the Development Review Committee's determination under this Chapter is in error, the person shall have the right to request reconsideration.

3.6.2. To be actionable, a Request for Reconsideration by the Development Review Committee must:

- (a) be filed with the Development Coordinator in writing within fourteen (14) business days of the date of the Development Review Committee's previous determination;
- (b) state the reasons why the previous determination should be reversed or modified;
- (c) present information that has not previously been presented for consideration by the Development Review Committee;
- (d) provide an explanation of the legal and factual grounds of the request; and
- (e) be accompanied by payment of the reconsideration fee established by the City Council, as codified in the City's Fee Schedule.

3.6.3. The Development Review Committee shall, within fourteen (14) business days of receipt of a Request for Reconsideration that conforms with this section, issue an administrative determination, or a statement declining reconsideration.

3.6.4. No person may appeal the Development Review Committee's determination under this Chapter without first seeking reconsideration.

SECTION 4. APPEAL TO CITY ADMINISTRATOR

4.1. If any person believes that the Development Review Committee's determination under this Chapter is in error, the person shall have the right to appeal such determination to the

City Administrator.

- 4.2.** To be actionable, an appeal must be filed with the City Administrator in writing within fourteen (14) business days of the date of the Development Review Committee's determination. The written Request for an Appeal must include:
- (a) a statement that the appellant has requested reconsideration by the Development Review Committee, and that the request for reconsideration:
 - (1) was denied; or
 - (2) yielded an erroneous determination regarding the project's eligibility for Grandfathered Development Status.
 - (b) a statement of the reasons why the determination should be reversed or modified;
 - (c) an explanation of the legal and factual grounds of the appeal; and
 - (d) be accompanied by payment of the appeal fee established by the City Council, as codified in the City's Fee Schedule.
- 4.3.** The City Administrator shall act upon an appeal within thirty (30) days of receipt of a written Request for Appeal that conforms to this subsection.

SECTION 5. APPEAL TO BOARD OF ADJUSTMENT

- 5.1.** If any person believes that the City Administrator's determination under this Chapter is in error, the person shall have the right to appeal such determination to the City's Board of Adjustment ("BOA").
- 5.2.** No person may seek a ruling from the Board of Adjustment without first seeking a determination from the City Administrator.
- 5.3.** To be actionable, an appeal must be filed with the BOA in writing within fourteen (14) business days of the date of the City Administrator's determination. The written Request for an Appeal must include:
- (a) a statement that the appellant sought an appeal from the City Administrator, and that the appeal:
 - (1) was denied; or
 - (2) yielded an erroneous determination regarding the project's eligibility for Grandfathered Development Status.
 - (b) a statement of the reasons why the determination should be reversed or modified;
 - (c) an explanation of the legal and factual grounds of the appeal; and
 - (d) be accompanied by payment of the appeal fee established by the City Council, as codified in the City's Fee Schedule.
- 5.4.** The Applicant may also request the BOA to grant a variance from the regulations at issue

under the same standards governing variances for other matters, as set forth in the City's Development Code, as amended.

- 5.5. The BOA shall convene a meeting and act upon an appeal within thirty (30) days of receipt of a written appeal that conforms to this section.

SECTION 6. JUDICIAL REVIEW

Should the Applicant be dissatisfied with the actions of the BOA, the Applicant may pursue all legal remedies to review the BOA's decision, including appeal to state district court, as set forth in LGC Section 211.011.

SECTION 7. BINDING NATURE

- 7.1. The City's determinations under this Chapter, if not timely appealed, shall be immediately filed in the City's files related to the project and the determination shall be considered binding upon the City, the Applicant, and the property owner (if different from the Applicant) for the duration of the project.
- 7.2. Notwithstanding the binding nature of a determination issued by the Development Review Committee or City Administrator, and any ruling by the BOA, the City and the property owner may, at any time, enter into a Development Agreement or negotiate the enactment of a Planned Development District that, to the extent authorized by law, modifies the determination and the applicable development regulations to be applied to the project. The issue of which rules apply to a permit application may be resolved by mutual agreement. The agreement may contain special terms and conditions, as deemed necessary to protect the public interest.
- 7.3. The City's recognition of Grandfathered Development Status does not prevent the City from requiring the submission of updated engineering reports, site plans, or landscape plans, as may be applicable under current regulations.

SECTION 8. EXPIRATIONS

- 8.1. Permits issued by the City of Top Notch that are subject to LGC 245, but do not expressly contain an expiration date, shall expire by operation of law two (2) years after issuance. This subsection shall not apply to permits pursuant to which progress has been made toward the completion of the project, as determined by LGC 245.005(c), as may be amended.
- 8.2. Projects subject to LGC 245 shall expire by operation of law five (5) years after an application was filed for the first permit necessary for the project. This subsection shall not apply to permits for which progress has been made toward the completion of the project, as determined by LGC 245.005(c), as may be amended.

SECTION 9. TRANSFERABILITY

Grandfathered Development Status, as recognized by the City pursuant to this Chapter, runs with the land. Thus, Grandfathered Development Status is transferable to subsequent owners / occupants.