

AN ORDINANCE OF THE TOWN OF AWENDAW, SOUTH CAROLINA, TO AMEND TITLE XV: LAND USAGE, CHAPTER 153: ZONING CODE, GENERAL PROVISIONS OF THE CODE OF THE TOWN OF AWENDAW, SOUTH CAROLINA, BY AMENDING SECTION 153.009 DEFINITIONS, ADOPTING A NEW SECTION 153.051 VESTED RIGHTS, ALONG WITH NEW SECTIONS 152.052 THROUGH 153.060 THERETO, PROVIDING FOR VESTED RIGHTS ORDINANCE AND PROCEDURE.

WHEREAS, the Planning Commission made a recommendation to adopt a Vested Rights Ordinance on December 15, 2025;

WHEREAS, by Act No. 287 of 2004, known as the Vested Rights Act and codified at S.C. Code 6-29-1510 to -1560, the South Carolina General Assembly established vested rights;

WHEREAS, the Town of Awendaw seeks to adopt a vested rights ordinance pursuant to S.C. Code 6-29-1530 implementing limitations to the total annual extensions allowed with prospective application to site-specific development plans that are approved by the Town following adoption and effective date of this ordinance;

WHEREAS, the Town of Awendaw wishes to promote sustainable development and current best practices within the Town's municipal limits;

WHEREAS, consistent with the goals and objectives of the current Comprehensive Plan adopted on August 7, 2025 and in recognition of the Town's commitment to sustainable growth and development, it is essential to ensure that future planned or phased developments are strategically aligned with the community's evolving needs. This alignment is crucial not only for addressing immediate requirements but also for fostering long-term benefits that enhance the Town's infrastructure, economic vitality, and environmental sustainability. By prioritizing developments that serve the best interests of public health, safety, and welfare, the Town aims to create a harmonious balance between growth and quality of life, thereby securing a prosperous future for all residents;

WHEREAS, Town Council is authorized to adopt ordinances and amend the Town of Awendaw Code of Ordinances from time to time;

WHEREAS, Town Council now believes it is in the best interest of its citizens to now act as provided herein; and,

NOW THEREFORE, be it ordered and ordained by the Council of the Town of Awendaw, SC and it is ordained by the authority of said Council that the Town of Awendaw Code of Ordinances shall be and hereby is amended as stated herein above and as provided herein below:

VESTED RIGHTS

SECTION 153.051 TITLE & EFFECTIVE DATE

- (A) Title. This Ordinance is hereby officially known and cited as the Vested Rights Ordinance of the Town of Awendaw, South Carolina. References herein to "the Ordinance" or "this Ordinance" shall be interpreted as references to this Vested Rights Ordinance.

- (B) Effective Date. This Ordinance shall take effect and be in force from and after the date of its adoption by the Town Council of the Town of Awendaw, adopted this [REDACTED] day of [REDACTED], 2026. This Ordinance shall apply prospectively to any site-specific development plans approved by the Town after the adoption and effective date of this Ordinance.

SECTION 153.052 AUTHORITY; CONFLICT; ABROGATION; SEVERANCE

- (A) Authority. This Ordinance is enacted pursuant to the authority conferred upon the Town of Awendaw by the South Carolina General Assembly to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.
- (B) Conflict of Law. This Ordinance shall be constructed so as to not conflict with any provision of state or federal law. However, the provisions of this Ordinance shall control if more restrictive than other local, state, or federal laws or regulations
- (C) Abrogation. This Ordinance is not intended to repeal, abrogate, annul, impair, or interfere with any existing vested rights established pursuant to law.
- (D) Severance. If any portion of this Ordinance is legally invalid by a court of competent jurisdiction, all remaining provisions shall continue to be of full force and effect.

SECTION 153.053 PURPOSE

The Town of Awendaw hereby finds and declares that the public interest and general welfare of the residents of the Town of Awendaw will be served through the creation of clear and fair procedures for the determination of vested rights of real property for future land development activities. These procedures will follow the Town of Awendaw's goals and objectives to encourage sustainable development for the betterment of the community. These regulations seek to require planned and phased development to be reassessed in more frequent intervals to ensure sound and reasonable planning for future development.

AMENDMENT TO SECTION 153.009 DEFINITIONS (TO BE ADDED TO EXISTING)

"**APPROVED**" or "**APPROVAL**" means a final action by the local governing body or an exhaustion of all administrative remedies that results in the authorization of a site-specific development plan or a phased development plan.

"**BUILDING PERMIT**" means a written warrant or license issued by a local building official that authorizes the construction or renovation of a building or structure at a specified location.

"**CONDITIONALLY APPROVED**" or "**CONDITIONAL APPROVAL**" means an interim action taken by a local governing body that provides authorization for a site-specific development plan or a phased development plan but is subject to approval.

"**LANDOWNER**" means an owner of a legal or equitable interest in real property including the heirs, devisees, successors, assigns, and personal representatives of the owner. "Landowner" may include a person holding a valid option to purchase real property pursuant to a contract with the owner to act as his agent or representative for purposes of submitting a proposed site-specific development plan or a phased development plan pursuant to this article.

"LOCAL GOVERNING BODY" means: (a) the Town Council of the Town of Awendaw, (b) a county or municipal body authorized by statute or by the Town of Awendaw to make land-use decisions.

"PERSON" means an individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity as defined by South Carolina laws.

"PHASED DEVELOPMENT PLAN" means a development plan submitted to a local governing body by a landowner that shows the types and density or intensity of uses for a specific property or properties to be developed in phases, but which do not satisfy the requirements for a site-specific development plan.

"REAL PROPERTY" or **"PROPERTY"** means all real property that is subject to the land use and development ordinances or regulations of the Town of Awendaw, and includes the earth, water, and air, above, below, or on the surface, and includes improvements or structures customarily regarded as a part of real property.

"SITE-SPECIFIC DEVELOPMENT PLAN" means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. The plan may be in the form of the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land-use approval designations as are used the Town of Awendaw.

"VESTED RIGHT" means the right to undertake and complete the development of property under the terms and conditions of a site-specific development plan or a phased development plan as provided in this ordinance and in the zoning ordinances and local land development ordinances and regulations adopted by the Town of Awendaw. A landowner's rights are only considered vested in the types of land use and density or intensity of uses defined in the site-specific development plan.

SECTION 153.054 ADMINISTRATION

- (A) The provisions of this Ordinance shall be administered and enforced by the Town of Awendaw Planning Director, the Board of Zoning Appeals, or the Planning Commission, or by such other officials, officer, or department as may be designated by the Town Council.
- (B) The Planning Director shall institute, or cause to be instituted, such actions necessary to ensure compliance with these provisions, and/or the conditions placed upon any permit or other approval.
- (C) The Town Council, Board of Zoning Appeals, Planning Commission and the Planning Director shall have the authority to cause whatever actions are necessary at a site or location where a violation of this Ordinance has occurred to ensure that it is returned to its original quality and function, and the same cause of action shall be at no cost to the Town of Awendaw and shall be assessed to the violator.

SECTION 153.055 ESTABLISHMENT OF VESTED RIGHTS

- (A) A vested right is established for two years upon the final approval or conditional approval of a site-specific development plan by the local governing body or the Planning Director.

- (B) A minimum of two years is granted notwithstanding any other timeline requirements currently in effect for identified site-specific development plans.
- (C) Phased development plans remain subject to review and approval of all phases prior to any portion of the project being vested.
- (D) A site-specific development plan or phased development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained.
- (E) Vested rights cannot be waived as a condition of approval or conditional approval.

SECTION 153.056 OVERVIEW OF REVIEW, APPROVAL, AND APPEAL PROCESS

- (A) A site-specific development plan must be deemed administratively complete by the Planning Director before approval may be granted in any form.
 - (1) When determining administrative completeness, the Planning Director may use the regulations set forth in Title XV of the Awendaw Code of Ordinances to determine if an application meets Town standards.
- (B) Unless otherwise specified, the application, review, and approval process for currently identified site-specific development plans shall be followed according to the processes set forth in Title XV of the Awendaw Code of Ordinances.
- (C) Where a procedure is not currently in effect, or until Title XV of the Awendaw Code of Ordinances is later amended to include procedures, the following process is to be followed:
 - (1) Applications are to be submitted with the following items:
 - (a) A complete application form for the request; and
 - (b) A plat of survey of the subject property, if available, or a tax map that identifies the subject property; and
 - (c) A concept plan that includes the following information:
 - 1. The proposed means of access to a public road;
 - 2. Surrounding land uses;
 - 3. All adjacent roads;
 - 4. A preliminary map and analysis of natural resources present on the subject property and surrounding property; and
 - 5. A conceptual layout of the proposed land use, which shall be overlaid on the preliminary natural resources map, and which shall show streets, lots, parks and other facilities located to protect natural resource areas.
 - (2) Review, Approval and Appel Process
 - (a) Once an application has been deemed administratively complete by the Planning Director, and fees have been received, the Planning Director shall compile a staff report (which may include the comments and recommendations of the Water Department and other affected agencies, if applicable) that reviews the application in light of all applicable requirements of Title XV of the Awendaw Code of Ordinances. This report shall be forwarded to the Planning Commission.

- (b) Within the 60 days of the Planning Commission's receipt of a complete application and staff report, the Planning Commission shall review the proposed land use and act to approve, approve with conditions or deny the land use, based on whether it complies with all applicable requirements of Title XV of the Awendaw Code of Ordinances.
 - (c) Any person with a substantial interest in the proposed land use decision of the Planning Commission or any officer or agent of the Town may appeal the Planning Commission decision to the Circuit Court in Charleston County. Appellants shall file with the Court of Clerk a written petition plainly and fully setting forth how such decision is contrary to law. Such appeal shall be filed within 30 days of appellant's actual notice of the Planning Commission's decision.
- (D) Once final or conditional approval is granted for the site-specific development plan, by either the local governing body or the Planning Director, and its approval is not overturned in a Circuit Court, vested rights are established for two (2) years from the date of final approval.

SECTION 153.057 EXTENSIONS AND APPLICATION REQUIREMENTS

- (A) As more specifically set forth in subsection B of this Section, a landowner of real property with a vested right may apply for a one-year annual extension of the vested right so long as a complete application is received by the Planning Director prior to the expiration of the vesting period. The applicant may apply for a total of two (2) one-year annual extensions of the vested rights.
- (B) A request for an extension of a person's vested rights must be submitted in writing to the Planning Director 60 days prior to the expiration of the vesting period by the owner of the real property or their designate agent. If the property in question has been subsequently subdivided or sold, the requestor must individually apply to receive an extension of their vested rights for each parcel.
- (C) The vesting extension request shall be accompanied by all the following items:
 - (1) Application
 - (a) A completed extension request form;
 - (b) A copy of a Town specific formal approval for the site-specific development granted by the local governing body or designated officer;
 - (c) A written explanation of the justification for the extension; and
 - (d) An administrative processing fee.
 - (2) Administrative Processing Fee
 - (a) An administrative processing fee is required to be paid with all vesting extension requests as follows:
 - 1. For the first annual extension request, the administrative processing fee is \$200.
 - 2. For the second annual extension request, the administrative processing fee is \$100.
- (D) Approval of the first or second annual extensions will follow the same requirements set forth in Section 153.056 (C)(2) of this Chapter.

- (E) Failure to timely submit a complete application and an administrative processing fee for the annual extension will result in forfeiture of one's vested site-specific development plan.

SECTION 153.058 TERMINATION, REVOCATION, AND ANNEXATION

- (A) A vested right established under a conditionally approved site-specific development plan or conditionally approved phased development plan may be terminated by the Planning Commission upon its determination, following public notice and public hearing, that the landowner has failed to meet the terms of the conditional approval.
- (B) A vested right to a site-specific development plan or phased development plan is subject to revocation by Town Council upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval.
- (C) If real property having a vested site-specific development plan or vested phased development plan is annexed, Town Council after a recommendation from the Planning Commission must determine, after notice and public hearing in which the landowner is allowed to present evidence, if the vested right is effective after annexation.

SECTIONS 153.059 PRECLUSIONS

- (A) A validly issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code.
- (B) A vested site-specific development plan or vested phased development plan is subject to later enacted federal, state, or local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit.
- (C) A vested site-specific development plan or vested phased development plan is subject to later overlay zoning that imposes site plan-related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses.
- (D) A change in the zoning district designation or land-use regulations made subsequent to vesting that affect real property does not operate to affect, prevent, or delay development of the real property under a vested site-specific development plan or vested phased development plan without consent of the landowner.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON FINAL READING

Introduced:

Public Hearing:

Planning Commission Recommendation:

Chris Crolley

Final Reading: _____

Mayor, Town of Awendaw

Attest: _____

Donna Steed

Clerk of Council