

UT LAW SCHOOL 26<sup>TH</sup> LAND USE CONFERENCE

# MUNICIPAL AUTHORITY TO TERMINATE LEGAL NONCONFORMING USES

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## Legal Nonconforming Uses

- Initially developed or used in compliance with zoning in effect at that time
- Otherwise the use is illegal and not allowed
- Planning policy is to discourage nonconforming uses
- Many legal nonconforming structures and uses exist

## Voluntary Termination

- Tenant moves out and different tenant moves in
- Property is sold and redeveloped
- Nonconforming use of property shrinks
- One nonconforming use cannot transition to another nonconforming use

## Involuntary Termination

- Destruction of structure or use (total or partial)
- Abandonment
  - Nonuse for a period of time
  - Overt act that carries the implication of abandonment
  - Intent to abandon
- Termination by amortization

## Amortization

- Affords nonconforming property owner period of time to recoup investment
- Not authorized in Chapter 211, Tex. Loc. Gov't. Code
- Historically allowed by case law and city ordinance
- Typically role of the Board of Adjustment
- Set period of time for some uses
- § 43.002, Tex. Loc. Gov't. Code: Continuation of land uses following annexation

## Two Step Process

- First hearing to determine if use has an adverse impact
  - Character of surrounding properties
  - Degree of incompatibility with current zoning district
  - Environmental, traffic and other impacts
- Second hearing to set a compliance date based on actual investment in the use before it became nonconforming

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## Title search: Municipal Authority to Terminate Legal Nonconforming Uses

Also available as part of the eCourse

[2022 Land Use eConference](#)

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"Do Cities Have the Right to Unilaterally Terminate Legal Nonconforming Uses?"