

Moving On or Staying Put: Legal Basics of Vested Rights & Noncomformity in Land Use Planning

UT Annual Land Use CLE

April 6, 2017

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Common Theme: “The Past is Never Truly Past”

- Building or maintaining projects that don't comply with current regulations.
- A project's history—whether it's remained consistent, been completed or changed in a manner that triggers current regulations.



Differences

- The concept of vested rights (aka “grandfathering”) applies to new construction that is subject to older regulations because it is part of a project begun before current codes were adopted.
- Legal nonconformity refers to existing construction that was lawfully built under older regulations but doesn’t meet current code.



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Vested Rights: A Brief History

- Common law rule is that development is subject to regulations in effect when application is submitted.
- Prior to adoption of state vested rights laws in 1987, exceptions were few and generally required an “irrevocable commitment of resources” in reliance on an earlier approval.



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Chapter 245 of the Local Government Code

- (Re)adopted in 1999, Chapter 245 is the current state statute on vested rights and constitutes an exception to the common law rule.
- Its purpose is to “freeze” or “lock-in” regulations in effect when a project begun.



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Rule of Thumb

- Evaluating a vested rights claim involves comparing: (1) the development that is now being proposed; and (2) the original project for which vested rights are claimed.
- If these two are linked together as a single and continuous project, then all permits required to complete the project are vested to the older regulations in effect on the date that the first application for the project was submitted.



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First appeared as part of the conference materials for the
2017 Land Use Fundamentals session

"Moving On or Staying Put? The Law of Non-Conformity & Vested Rights"