UT LAW CLE | THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

2021 Land Use Fundamentals

April 14, 2021
Live Webcast

Texas Vested Rights Statute: Chapter 245

A Simplified View

Reid C. Wilson

Author Contact Information:
Reid C. Wilson
Wilson, Cribbs & Goren, P.C.
Houston, TX

rwilson@wcglaw.com
713.222.9000

CHAPTER 245: A SIMPLIFIED VIEW

Tx. Loc. Gov't Code Ch. 245 provides statutory vested property rights in the regulatory scheme of a local government effective upon the first application for a required development permit for a project, which vesting continues throughout the life of the project. Under Texas common law, only upon issuance of a permit was a project vested.

As statutory vested rights go, the Texas statute is one of the earliest vesting statutes. The definition of "permit" is very broad, and specifically includes utility commitments, plats and development plans, which are the earliest permits sought in a real estate development project. A practical filing process is permitted by mail, to eliminate monkey business in the permit application process. The act of application is the trigger, whether or not the local government procedures require a "completeness" review. So long as the application gives "fair notice" (not a defined term, but certainly not a high bar) of the project, then the vesting takes effect for the project.

All regulations applicable to the project are frozen in time as of vesting, however, the developer may "cherry pick" any later adopted regulations which, in their opinion, benefit the project. There are some exceptions to vesting, but that list, which at first glance seems extensive, but a careful review reveals many exemptions from and limits on many exceptions. For example, the general rule is that all zoning regulations are exempt, but there are significant exemptions, and those have been broadly interpreted. For several types of regulations, you must work through double and triple negatives to understand what is vested! Zoning regulations with "affect" building size, landscaping/trees, open space/park dedication, property classification (use), lot size/dimensions or lot coverage are vested. The court interpretation of "affect" is "having an effect on."

Ongoing business operations (like a restaurant) are not vested. The focus is on physical structures and permitted development and use thereof. Further, if the project changes from that described in the vesting permit, then the vesting is lost. Fortunately, a new vesting can occur with each additional application for the project.

Enforcement is by injunction or declaratory judgement (no damages), but with the right for a prevailing party to recover legal fees. Governmental immunity is waived.

Originally, Texas adopted statutory vested rights in 1987 to attract out of state companies bringing jobs and other economic development benefits. Later, in 1999, the statute was readopted with a broader, property rights focus, to prevent local government interference with real estate development projects, once they are commenced.

Note: Another type of vested rights is provided in Loc. Gov't Code Sec. 43.002 for newly annexed areas, limiting the prohibition of prior permitted uses, both those then in existence, and those actively contemplated.

CHAPTER 245: STATUTORY LANGUAGE REORGANIZED & EXPLAINED

Below is a reconfigured Ch. 245, *without text changes*, but annotated to add the following:

- Explanatory titles **[bold brackets]**
- Important terms and phrases highlighted or **bolded**
- Comments and caselaw cites in footnotes (where full cites are not provided, a case summary is included later in the materials)

I. [General Vesting Rules]

Sec. 245.002. UNIFORMITY OF REQUIREMENTS.

[Single Permit Vesting]

(a) Each[1] **regulatory agency** shall consider
the approval, disapproval, or conditional approval of
an application[2] for a **permit**[3]
solely[4] on the basis of any
orders,
regulations,
ordinances,
rules,
expiration dates, **or**
other properly adopted requirements[5]
in effect at the time:
(1) the original **application** for the permit is filed for review for any purpose,
including review for administrative completeness[6]; **or**[7]
(2) a **plan** for development of real property **or**
plat application is
filed with a regulatory[8] agency[9].

---

[1] Chapter 245 is known as the "Vested Rights Act. *Md. Manor Assocs.* "Chapter 245…recognizes a developer's vested rights and requires a regulatory agency to consider approval or disapproval of an application for a permit, such as a subdivision plat, based on the regulations and ordinances in effect at the time the original application is filed." *Milestone Potranco Dev.* "The effect of vested rights under Chapter 245…is to 'freeze' the land use regulations that existed as the time of the first permit application was filed though the completion of the 'project', in other words, a project with vested rights is not subject to intervening regulations or changes after the vesting date." *Rogers Shavano Ranch. "* In effect, chapter 245 "freezes" the rules at the time the original application for a permit is filed, and limits the rights of a city to 'change the rules in the middle of the game." *Tiki Island I; Harper Park Two*. These rights are commonly referred to as "vested rights". *Greater San Antonio Builders*.

[2] Texas has early vesting; at permit application, prior to many other states.

[3] A "request" for a Permit is an application. *Rogers Shavano Ranch*.

[4] Important limitation

[5] Broad scope

[6] The application need not be accepted, only filed.

[7] Effective 9/1/05.

[8] Effective 9/1/05.

[9] *Clarifies* that submission of development plans and plats establishes vesting.

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Texas Vested Rights Statute: Chapter 245

First appeared as part of the conference materials for the
2021 Land Use Fundamentals session
"Vested Rights: What Have We Learned in the Last 10 Years"