

2-12-25

33012

ORDINANCE NO. _____

An ordinance amending Chapter 51A, “Dallas Development Code: Ordinance No. 19455, as amended,” of the Dallas City Code by amending Sections 51A-1.106, 51A-3.102, 51A-4.701, 51A-4.703, and 51A-4.704; providing that additional notice must be given to owners and tenants of property whose use may become nonconforming due to an amendment to the Dallas Development Code or a change in zoning district; providing a revised process for initiating and conducting a board of adjustment hearing to require that a nonconforming use cease operation; amending Chapter 52, “Administrative Procedures for the Construction Codes,” by amending Sections 303.12.1.4, 303.12.1.6, 306.12.3, 306.14, and 306.15; removing the fees and the fee waiver process for a compliance request for a nonconforming use; providing that a certificate of occupancy for a nonconforming use is void after the property owner or lessee has been fully compensated based on the property owner’s or lessee’s choice of remedy; providing requirements for written notice of building official decisions; providing procedures for appealing building official decisions; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the 88th Texas Legislature met in regular session between January 10, 2023 and May 29, 2023; and

WHEREAS, S.B. 929 was filed on February 14, 2023; and

WHEREAS, S.B. 929 provides that additional notice must be given if an amendment to the Dallas Development Code or a change in zoning district may render a use nonconforming; and

WHEREAS, S.B. 929 provides that if the board of adjustment establishes a compliance requirement for a nonconforming use, the owner or lessee may opt to receive a payment from the city to cover the costs directly attributable to ceasing the nonconforming use of the property and

the diminution of the market value of the property or may opt to continue operating the business until the costs and diminution in market value are recovered; and

WHEREAS, S.B. 929 was approved by both chambers of the Texas Legislature; and

WHEREAS, S.B. 929 was signed by Governor Greg Abbott on May 19, 2023 and took effect immediately; and

WHEREAS, the city plan commission and the city council, in accordance with the Charter of the City of Dallas, the state law, and the ordinances of the City of Dallas, have given the required notices and have held the required public hearings regarding this amendment to the Dallas City Code; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Paragraph (1) of Subsection (g), "Posting of Signs by the Director," of Section 51A-1.106, "Notification Signs Required to be Obtained and Posted," of Article I, "General Provisions," of Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code is amended to read as follows:

"(1) When the city council or city plan commission authorizes a hearing on a change in zoning district classification or boundary pursuant to Paragraph 51A-4.701(a)(1), the city council, city plan commission, or landmark commission authorizes a public hearing to establish or amend a historic overlay district pursuant to Paragraph 51A-4.501(c)(2), the board of adjustment authorizes a hearing pursuant to Paragraph 51A-4.703(a)(1), or the city council [~~or an applicant~~] requests that the board of adjustment consider establishing a compliance requirement [date] for a nonconforming use pursuant to Subparagraph 51A-4.704(a)(1), the director shall post the required number of notification signs on the subject property at least 30 days before the first public hearing unless the body authorizing a hearing approves a shorter time period for posting the required notification signs at the time of authorization."

SECTION 2. That Subsection (d), "Powers and Duties," of Section 51A-3.102, "Board of Adjustment," of Article III, "Decisionmaking and Administrative Bodies," of Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code is amended to read as follows:

"(d) Powers and duties. The board has the following powers and duties, which must be exercised in accordance with this chapter:

(1) To hear and decide appeals from decisions of administrative officials made in the enforcement of the zoning ordinance of the city. For purposes of this section, "administrative official" means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue.

(2) To interpret the intent of the zoning district map when uncertainty exists because the actual physical features differ from those indicated on the zoning district map and when the rules set forth in the zoning district boundary regulations do not apply.

(3) To hear and decide special exceptions that are expressly provided for in this chapter.

(4) To bring about the discontinuance of a nonconforming use under a plan whereby the owner[s] or lessee of the nonconforming use is compensated for the costs of ceasing the nonconforming use of the property and any diminution in the market value of the property as a result of a requirement to discontinue the nonconforming use ~~[actual investment in the structure(s) prior to the time that the use became nonconforming can be amortized within a definite time period]~~.

(5) To hear and decide requests for change of occupancy of a nonconforming use to another nonconforming use.

(6) To hear and decide requests for the enlargement of a nonconforming use.

(7) To hear and decide requests for reconstruction of a nonconforming structure on the land occupied by the structure when the reconstruction will not permanently prevent the return of the property to a conforming use and will not increase the nonconformity.

(8) To require the vacation and demolition of a nonconforming structure that is determined to be obsolete, dangerous, dilapidated, or substandard.

(9) To consider on its own motion or upon the request of interested property owners, the operation or alteration of any use which is a nonconforming use because of its noncompliance with the environmental performance standards set forth in this chapter, and to specify the conditions and standards which must be complied with for continuance of the nonconforming use.

(10) To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

(A) In general.

(i) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

(ii) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

(iii) the variance is not granted to relieve a self-created or personal hardship, nor for financial reasons only, except as provided in Subparagraph (B)(i), nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

(B) Structures. In exercising its authority under Suparagraph [Subsection] (A)(ii), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

(i) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 of the Texas Tax Code;

(ii) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;

(iii) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

(iv) compliance would result in the unreasonable encroachment on an adjacent property or easement; or

(v) the municipality considers the structure to be a nonconforming structure.”

SECTION 3. That Subsection (a), “Initiation,” of Section 51A-4.701, “Zoning Amendments,” of Division 51A-4.700, “Zoning Procedures,” of Article IV, “Zoning Regulations,” of Chapter 51A, “Dallas Development Code: Ordinance No. 19455, as amended,” of the Dallas City Code is amended by adding a new Paragraph (1.1) to read as follows:

“(1.1) In addition to any notice required by Paragraph (1) of this subsection, the director shall send written notice of each public hearing for an amendment to this chapter or a change in zoning district under which a current conforming use would become a nonconforming use if the amendment to this chapter or change in zoning district is adopted. The notice must:

(A) be mailed by U.S. mail to each owner of real or business personal property where the proposed nonconforming use is located as indicated by the most recently approved municipal tax roll and each occupant of the property not later than the 10th day before the hearing date;

(B) contain the time and place of the hearing; and

(C) include the following text in bold 14-point type font or larger: "THE CITY OF DALLAS IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE. PLEASE READ THIS NOTICE CAREFULLY."

SECTION 4. That Paragraph (1), "Authorized Public Hearings," of Subsection (a), "Initiation," of Section 51A-4.703, "Board of Adjustment Hearing Procedures," of Division 51A-4.700, "Zoning Procedures," of Article IV, "Zoning Regulations," of Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code is amended to read as follows:

"(1) Authorized public hearings. Except for a request to establish a compliance requirement for a nonconforming use under Section 51A-4.704, t[F]he board may authorize a public hearing on issues within the board's jurisdiction. A board authorized public hearing must comply with the procedures in this section. If 10 or fewer property owners are involved, the director shall send written notice to the owners of real property within the subject area not less than 10 days before the meeting at which the board will consider authorization of a public hearing. This notice must be written in English and Spanish if the area of request is located wholly or partly within a census tract in which 50 percent or more of the inhabitants are persons of Spanish origin or descent according to the most recent federal decennial census. If more than 10 property owners are involved, the director shall give notice of the public hearing in the official newspaper of the city at least 10 days before the meeting at which the board will consider authorization of a public hearing."

SECTION 5. That Paragraph (1) of Subsection (a), "Compliance Regulations for Nonconforming Uses," of Section 51A-4.704, "Nonconforming Uses and Structures," of Division 51A-4.700, "Zoning Procedures," of Article IV, "Zoning Regulations," of Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code is amended to read as follows:

“(1) Compliance requirement for [Amortization of] nonconforming uses.

(A) Request to establish compliance requirement [date]. The city council may request that the board of adjustment consider imposing [establishing] a compliance requirement [date] for a nonconforming use. A request under this subsection must include estimates of the amounts determined in Section 51A-4.704(a)(1)(D)(i)(aa)-(bb). [In addition, any person who resides or owns real property in the city, may request that the board consider establishing a compliance date for a nonconforming use.] Upon receiving such a request, the city’s chief financial officer must determine if there are sufficient funds available in the nonconforming use fund established under this subsection to cover potential costs that may be incurred by the city if the board imposes a compliance requirement. If sufficient funds are not available, the application shall be deemed incomplete for lack of funding. If the chief financial officer determines that sufficient funds are available, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to impose [establish] a compliance requirement [date] for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.
- (iv) The hours of operation of the use.
- (v) The extent to which continued operation of the use may threaten public health or safety.
- (vi) The environmental impacts of the use’s operation, including but not limited to the impacts of noise, glare, dust, and odor.
- (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(C) Finality of decision. A decision by the board to grant a request to impose ~~[establish]~~ a compliance requirement ~~[date]~~ is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to impose ~~[establish]~~ a compliance requirement ~~[date]~~ is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of remedies ~~[amortization period]~~.

(i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, the director ~~[it]~~ shall, in accordance with the law, determine:

(aa) the costs incurred by the owner or lessee of the property that are directly attributable to ceasing the nonconforming use of the property, including expenses related to demolition, relocation, termination of a lease, or discharge of a mortgage; and

(bb) an amount equal to the greater of, as determined by the director, the diminution in the market value of the property, computed by subtracting the current market value of the property after the imposition of the requirement to stop the nonconforming use of the property from:

(11) the market value of the property on the day before the date notice was given under Section 51A-4.701(a)(1.1); or

(22) the market value of the property on the day before a request to impose a compliance date is accepted under this section ~~[provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period].~~

(ii) The property owner or lessee may choose to:

(aa) receive a payment from the city for the amount calculated in Romanette (i); or

(bb) continue operating the nonconforming use until the owner or lessee recovers the amount calculated in Romanette (i) through the owner's or lessee's continued business activities according to generally accepted accounting principles.

(iii) For purposes of this subparagraph, MARKET VALUE means the price the sale of the property would bring in an arms-length transaction when offered for sale by one who wishes, but is not obliged, to sell and when bought by one who is under no necessity of buying it ~~[following factors must be considered by the board in determining a reasonable amortization period:~~

(aa) ~~The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.~~

(bb) ~~Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.~~

(cc) ~~Any return on investment since inception of the use, including net income and depreciation.~~

(dd) ~~The anticipated annual recovery of investment, including net income and depreciation].~~

(E) Notice of board action. Not later than the 10th day after the board imposes a requirement to stop operating a nonconforming use, the director shall give written notice to each owner or lessee of the property, as indicated by the most recently approved municipal tax roll, who is required to stop a nonconforming use of the property of the requirement and of the remedies to which an owner or lessee of the property is entitled under Subparagraph (D) [~~Compliance requirement.~~ If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use].

(F) Notice of choice of remedy. An owner or lessee of property who receives a notice to stop operating a nonconforming use under Subparagraph (E) shall, not later than the 30th day after the date the director gives the notice, respond in writing to the director indicating the remedy chosen under Subparagraph (D) by the owner or lessee of the property. If there is a conflict in the choice of remedy by the owner and a lessee of the property, the owner's choice of remedy controls. If there is a conflict in the choice of remedy by the owners of a property that has more than one owner, the choice of remedy made by the owner or owners holding the greater ownership interest in the property controls. The director may choose the remedy if the owner or lessee does not provide notice of its choice of remedy by the 30-day deadline [~~For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use].~~

(G) Compliance date.

(i) A property owner or lessee receiving a payment in accordance with Section 51A-4.704(a)(1)(D)(ii)(aa) must stop operating the nonconforming use no later than the 10th day after the date of the payment. If more than one person seeks a payment from the city under this section, the director shall apportion the payment between each person based on the market value of the person's interest in the property. The apportionment determination may be appealed to the board in accordance with Subparagraph (H).

(ii) A property owner or lessee who continues operating the nonconforming use in accordance with Section 51A-4.704(a)(1)(D)(ii)(bb) must stop operating the nonconforming use immediately upon the recovery of the amount determined under Subparagraph (D).

(H) Appeal of remedy.

(i) A person entitled to a remedy under this section may appeal the director's determination under Subparagraph (D) to the board of adjustment not later than the 20th day after the determination is made. The director has the burden of proof to establish the correctness of the director's determination.

(ii) A person seeking to continue operation of a nonconforming use under Subparagraph (D) who appeals the decision of the director under Subparagraph (D) may continue to operate the property in the same manner pending the appeal unless the building official shows cause to stay the nonconforming use by certifying in writing to the board facts supporting the building official's opinion that continued operation of the nonconforming use would cause imminent peril to life or property. Upon a showing of cause the board may, after notice to the building official, grant a restraining order to stay continued operation of the nonconforming use.

(iii) If the board of adjustment determines that an owner or lessee is entitled to:

(aa) a payment under this section in an amount different than the amount determined by the director under Subparagraph (D), the board shall order, as applicable:

(11) additional payment to the owner or lessee; or

(22) the owner or lessee to reimburse the city; or

(bb) an amount of time to operate the nonconforming use that is different than the amount of time initially received under Subparagraph (D), the board shall order the director to allow the owner or lessee to operate the nonconforming use for additional or less time.

(iv) The board's decision is final unless appealed to the district court within 20 days in accordance with Section 211.019 of the Texas Local Government Code."

SECTION 6. That Paragraph (3) of Subsection (a), "Compliance Regulations for Nonconforming Uses," of Section 51A-4.704, "Nonconforming Uses and Structures," of Division 51A-4.700, "Zoning Procedures," of Article IV, "Zoning Regulations," of Chapter 51A, "Dallas Development Code: Ordinance No. 19455, as amended," of the Dallas City Code is amended to read as follows:

“(3) Nonconforming use fund.

(A) In general.

(i) There is hereby established a special fund for property owners and lessees who have chosen to receive a payment from the city under Section 51A-4.704(a)(1)(D)(ii).

(ii) With the approval and adoption of the city’s budget, city council may allocate funds to the nonconforming use fund for the payment of property owners and lessees of nonconforming uses for which the board has established a compliance requirement during the current fiscal year.

(B) Expenditures. The nonconforming use fund may only be used for making a payment to a property owner or lessee calculated in accordance with Section 51A-4.704(a)(1)(D)(i) [Reserved].”

SECTION 7. That Subparagraph 303.12.1.4, “Fee Schedule,” of Paragraph 303.12.1, “Fees for Board of Adjustment Applications,” of Subsection 303.12, “Zoning Fees,” of Section 303, “Fees,” of Subchapter 3, “Permits and Inspections,” of Chapter 52, “Administrative Procedures for the Construction Codes,” of the Dallas City Code is amended to read as follows:

“303.12.1.4 Fee schedule.

Type of Application	Application Fee
Single family variance	\$600.00
Single family special exception	\$600.00
Multifamily or nonresidential variance	\$900.00 + \$25 per acre
Multifamily or nonresidential special exception	\$1,200.00 + \$25 per acre
Landscaping or tree mitigation special exception	\$1,200.00 + \$50 per acre
Variance and special exception to off-street parking requirements	\$900.00 + \$100 per parking space variance or special exception requested
[Compliance request for a nonconforming use]	\$1,000
All other non-sign appeals	\$900.00
Sign special exceptions	\$1,200.00
All other sign appeals	\$900.00”

SECTION 8. That Subparagraph 303.12.1.6, “Fee Waiver,” of Paragraph 303.12.1, “Fees for Board of Adjustment Applications,” of Subsection 303.12, “Zoning Fees,” of Section 303, “Fees,” of Subchapter 3, “Permits and Inspections,” of Chapter 52, “Administrative Procedures for the Construction Codes,” of the Dallas City Code is amended to read as follows:

“303.12.1.6. Fee waiver. The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant. The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination. If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for waiver have been determined by the board. In making this determination, the board may require the production of financial documents. ~~[Notwithstanding the above, the board may waive the fee for a request to establish a compliance date under Section 51A-4.704(a)(1) only if:~~

- ~~1. the applicant is a corporeal person for whom payment of the fee would result in substantial financial hardship; or;~~
- ~~2. a written request for a fee waiver is signed by the owners, as evidenced by the last approved city tax roll, of 20 percent or more of real property within 200 feet, including streets and alleys, of the boundary of the lot containing the nonconforming use.]”~~

SECTION 9. That Paragraph 306.12.3, “Void,” of Subsection 306.12, “Voiding of Certificate of Occupancy,” of Section 306, “Certificate of Occupancy,” of Subchapter 3, “Permits and Inspections,” of Chapter 52, “Administrative Procedures for the Construction Codes,” of the Dallas City Code is amended to read as follows:

“306.12.3 Void. A certificate of occupancy shall be void if:

1. A specific use permit required by the *Dallas Development Code* to operate the use or occupancy expires; or
2. A compliance requirement ~~[date]~~ for the use or occupancy has been established ~~[set]~~ by ordinance or the board of adjustment in accordance with the *Dallas Development Code* and the property owner or lessee has been fully compensated based on the property owner’s or lessee’s choice of remedy under Section 51A-4.704 of the Dallas Development Code ~~[passed].”~~

SECTION 10. That Subsection 306.14, "Written Notice," of Section 306, "Certificate of Occupancy," of Subchapter 3, "Permits and Inspections," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code is amended to read as follows:

"306.14 Written notice. Written notice of any action taken or determination made by the building official under this section must be given to the owner of the structure and land and to the operator of the use or occupancy at the address shown on the certificate of occupancy by certified mail with a five-day return receipt requested or by hand-delivery. Except when a compliance requirement [date] has been ordered [set] in accordance with the *Dallas Development Code*, the notice must state that the action taken or determination made by the building official is final unless appealed. The fact that the notice is returned undelivered or that the return receipt is not signed by the addressee shall not affect the validity of the notice."

SECTION 11. That Subsection 306.15, "Appeal of Actions and Determinations," of Section 306, "Certificate of Occupancy," of Subchapter 3, "Permits and Inspections," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code is amended to read as follows:

"306.15 Appeal of actions and determinations. Any action taken or determination made by the building official under this section shall be final unless appealed as follows:

1. If the action taken or determination made was pursuant to the codes, an appeal must be made to the building inspection advisory, examining, and appeals board in accordance with Section 208 before the 15th day after written notice of the action taken or determination made is given in accordance with Section 306.14; or
2. Except as provided in Paragraph 3, if the action taken or determination made was pursuant to the *Dallas Development Code*, an appeal must be made to the board of adjustment in accordance with the *Dallas Development Code*.
3. A certificate of occupancy that is void because a compliance requirement [date] for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* [has passed] may not be appealed under this subsection."

SECTION 12. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 13. That Chapters 51A and 52 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 14. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 15. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 16. That this ordinance applies to any application or request to require a person to stop the nonconforming use of a property due to its nonconformity with the property's current zoning filed on or after February 1, 2023 as required by Section 3(2) of S.B. 929 approved during the 88th Regular Session of the Texas Legislature.

SECTION 17. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

TAMMY L. PALOMINO, City Attorney

By Casey Buys
Assistant City Attorney

Passed FEB 12 2025



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL FEB 12 2025

ORDINANCE NUMBER 33012

DATE PUBLISHED FEB 16 2025

ATTESTED BY: