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**Staff: Sarah May, AICP, and the City Attorney’s Office**

**FILE NUMBER:** DCA223-008                      **DATE INITIATED:** September 1, 2023  
**TOPIC:** Amendment to the Dallas Development Code to align code with Texas Senate Bill 929, 88th Legislature  
**COUNCIL DISTRICT:** All                                      **CENSUS TRACTS:** All

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**PROPOSAL:** Consideration of amending Chapter 51A, the Dallas Development Code, with consideration to be given to amending Section 51A-3.102, “Board of Adjustment”; Section 51A-4.701, “Zoning Amendments”; Section 51A-4.703, “Board of Adjustment Hearing Procedures”; Section 51A-4.704, “Nonconforming Uses and Structures”; and related sections with consideration to be given to amending the notice requirements for zoning cases and code amendments that may result in the creation of a nonconforming use and the requirements for initiating and conducting a board of adjustment hearing to establish a compliance date pursuant to the requirements of Texas Senate Bill 929, 88th Legislature.

**SUMMARY:** The proposed code amendments update Chapter 51A to bring notice requirements and board of adjustment compliance requirement hearings into compliance with the Texas Local Government Code following the state’s adoption of SB 929, 88th Legislature.

**ZOAC RECOMMENDATION:** Approval, of ZOAC’s recommended amendments.

**STAFF RECOMMENDATION:** Approval, of staff’s recommended amendments.

**PREVIOUS CPC ACTION:** On May 16, 2024, the City Plan Commission held this item under advisement until July 25, 2024. On July 25, 2024, the City Plan Commission held this item under advisement to August 22, 2024.

- APPENDIX:**
- 1. Texas SB 929: <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00929F.htm>
  - 2. List of approved compliance hearing cases since 2005
  - 3. List of all compliance hearing cases since 2005

## **BACKGROUND INFORMATION:**

### Timeline

- On May 19, 2023, S.B. 929 was signed and went into effect. S.B. 929 amended the notice requirements for zoning cases and code amendments that may result in the creation of a nonconforming use and the requirements for initiating and conducting a board of adjustment hearing to establish a compliance requirement. SB 929 can be viewed here: <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00929F.htm>
- The Zoning Ordinance Advisory Committee (ZOAC) met and discussed this item on October 3 and recommended the item move forward to CPC on November 14, 2023.
- On February 15, 2024, the City Attorney's Office briefed CPC (view recording [here](#)).
- On May 16 and July 25, 2024, the City Plan Commission held this item under advisement.

## **STAFF ANALYSIS:**

### Nonconforming Use Regulations

The proposed code amendments update Chapter 51A to bring notice requirements and Board of Adjustment ("board") compliance requirement hearings into compliance with the Texas Local Government Code following the State's adoption of SB 929, 88th Legislature. For more background information, please watch the briefing video linked above. In short, the 88<sup>th</sup> Legislature passed a bill that requires Texas cities to offer fair market value for a business within 10 days if a compliance requirement is set for a nonconforming use.

A nonconforming use is, "A use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time." In other words, a nonconforming use is created when two actions occur. First, the land use must be "lawfully established" which means it must comply with all regulations (local to federal), which include but is not limited to being allowed in the zoning district, obtaining a Certificate of Occupancy (CO), and having all licenses and inspections to begin to operate the use. Second, a change in zoning district or an amendment to the Dallas Development Code (Chapters 51 and 51A) must occur that results in the originally lawfully established use being prohibited or requires a Specific Use Permit (SUP).

A nonconforming use is also not to be confused with a nonconforming *structure*, which is, “A *structure* which does not conform to the regulations (other than the use regulations) of this chapter, but which was lawfully constructed under the regulations in force at the time of construction.” Nonconforming structures also have nonconforming rights, but they are not tied to nonconforming rights of nonconforming uses unless a site is nonconforming both in use and development regulations. More information on the rights of nonconforming structures can be found in Subsection (c) of Section 51A-4.704 within the Dallas Development Code.

The declared purpose of having regulations on the rights to operate nonconforming uses is, “that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.”<sup>1</sup> Additional nonconforming regulations, such as limits on expansions and rights to convert a nonconforming use, remain applicable but will not be discussed in this case report. The focus of this report is on describing when a nonconforming use loses the right to continue operating and how SB 929 has necessitated amendments to the Dallas Development Code.

#### Loss of Nonconforming Rights per the Dallas Development Code

Within the Dallas Development Code, there are four ways that a nonconforming use can lose the right to continue operating. There are three ways that are dependent on the actions of the owner or operator. First, if it closes for a continuous six-month period<sup>2</sup>. Second, if the original nonconforming use changes to a conforming use<sup>3</sup>. Third, if the structure housing the use is destroyed by the *intentional* act of the owner or his agent. If the structure housing the nonconforming use is destroyed by a natural disaster or other act that was not intentional by the owner or owner’s agent, the structure housing the nonconforming use may be rebuilt in the general same location, size, and height as the one that was unintentionally destroyed without having to seek board approval or any other public hearings<sup>4</sup>.

The fourth way a nonconforming use can lose the right to continue operating is through a compliance hearing case with the board, currently called an amortization hearing in the Dallas Development Code. For the remainder of this report, the word, “amortization” will not be used because it is proposed to abandon that term in the proposed amendments to make the language plainer and more commonly understood. The first required hearing

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<sup>1</sup> Reference subsection(a) of §51A-4.704 within the Dallas Development Code.

<sup>2</sup> Reference subparagraph (a)(2) of §51A-4.704 within the Dallas Development Code.

<sup>3</sup> Reference subparagraph (a)(4) of §51A-4.704 within the Dallas Development Code.

<sup>4</sup> Reference subparagraph (a)(5) of §51A-4.704 within the Dallas Development Code.

was to determine if the continued operation of the nonconforming use would have an adverse effect on nearby properties. Then, if it is determined that the nonconforming use would have an adverse effect on nearby properties, the second required hearing was focused on the evaluations created by accountants to establish when a nonconforming use is determined to have recouped all costs that went into the use before it became nonconforming<sup>5</sup>.

Before SB 929 was effective, an application to set a compliance date could be authorized by the City Council, the board, or any person who resides or owns real property in the city. Since December 2005 when board application data was first entered digitally, there have been 18 compliance date applications, of which nine were approved by the board. Of those nine applications that were approved, none were submitted by the board, three were submitted by the City Council, and the remainder six applications were submitted by others. Four were to set a compliance date for hotel or motel uses (2006-2008). The remaining five cases were to set compliance dates for an alcoholic beverage establishment (2010), manufactured home park (2011), outside sales (2012), animal slaughtering (2012), and a car wash (2019).

SB 929 Impacts on the Dallas Development Code and Recommended Amendments  
*(updated)*

*Adding a Nonconforming Fund and Aligning the Process for Residents to Petition Council*

The discussion at both ZOAC meetings concentrated on a proposal to remove the ability for any person who resides or owns real property in the city to make an application to the board to set a compliance date for a nonconforming use. The proposal to remove that avenue was proposed for three reasons.

First, since SB 929 requires a municipality to provide a fair market value compensation to revoke the nonconforming rights of a property within 10 days, the compensation amount must be approved by City Council. Second, SB 929 has very specific parameters for determining fair market value and therefore the amount could be above budget. Third, since 2012, seven out of eight applications to establish a compliance date were submitted by a resolution of the City Council. Further, the most recent application to establish a compliance date by a person who resides or owns real property in the city was made in 2015 and was denied by the board.

However, ZOAC made a motion to, “consider the addition of an application process for residents to ask City Council to authorize a request to the board. The process should

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<sup>5</sup> Reference subparagraph (a)(1) of §51A-4.704 within the Dallas Development Code.

prevent applicants having a financial interest and not intrude into the board of adjustment process.” Therefore, the proposed amendments propose to create a Nonconforming Fund, and if there is enough money in the fund to cover an estimated cost, the Board of Adjustment can consider the request to begin the compliance hearing process.

Staff and the City Attorney’s Office explored potential new methods for terminating nonconforming use rights within this proposal but were unable to reach a consensus. It is important to note that existing city code provides seven grounds for the building official to revoke a certificate of occupancy (CO), which is listed below for reference. Given that a nonconforming use is automatically terminated after a six-month period of inactivity, and a CO is required for operation, there are alternative enforcement mechanisms available for noncompliant businesses.

#### Chapter 52: Administrative Procedures for the Construction Codes

306.13 Revocation of certificate of occupancy. The building official shall revoke a certificate of occupancy if the building official determines that:

1. the certificate of occupancy is issued in error;
2. the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information supplied;
3. a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
4. the structure or portion of the structure is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
5. a required city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired;
6. the holder of the certificate of occupancy has refused, upon request, to supply the building official with records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale or service of alcoholic beverages within the required time period; or
7. the use or occupancy authorized by the certificate of occupancy has been discontinued for six months or more. (Ord. 26029; 26579)

Staff anticipates that the payout option will primarily be used in cases involving amortization. This expectation is based on the historical preference for fee-in-lieu alternatives within the development community. For instance, since the implementation of parkland dedication fees in July 2019, no land has been dedicated; developers have consistently opted for the fee-in-lieu. Similarly, a fee-in-lieu option was introduced for Mixed Income Housing Development Bonuses in 2022.

It is also crucial to note that under SB 929, if a municipality amortizes a nonconforming use and issues a payout, the property owner retains ownership. This means the municipality does not acquire the property and prevents the municipality from realizing future economic benefits of property ownership. Additionally, in any successful amortization case, the property owner can continue using or selling the property as permitted. Therefore, with the payout option that the State of Texas has required all Texas municipalities to offer for amortization of nonconforming uses, this avenue of requiring compliance has been significantly reduced by the State.

*Additional written and mailed notices required for uses becoming nonconforming:*

The text of SB 929 adds a requirement to send mailed written notices as follows:

In addition to any notice required by this section or Section 211.007, the governing body of a municipality or a zoning commission, as applicable, shall provide written notice of each public hearing regarding any proposed adoption of or **change to a zoning regulation or boundary** under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The notice must:

(1) be mailed by United States 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;

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

(3) include the following text in bold 14-point type or larger:

**"THE [MUNICIPALITY NAME] 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."**

When ZOAC was presented on the proposed amendments to Chapter 51A to bring the Dallas Development Code into compliance with SB 929, there was no discussion on this

section and a verbatim codification of SB 929's wording was proposed and approved without discussion.

Upon further reflection, because future case law could change the application of the State's requirements, and if the State were to further amend the criteria or wording in the next legislative session, staff prefers that the codification of this wording be excluded from the Dallas Development Code and instead be changed to reflect that notification be in compliance with State Law. However, staff expects to propose future amendments to '51A-4.701 Zoning Procedures' to modernize the process and increase public engagement and the amendments proposed in this report can be reevaluated at a later date.

In the meantime, internal procedures will remain in place to continue to comply with the State's requirements. Examples of how current internal procedures comply with the State's requirements, even when they are not part of the Dallas Development Code, include the daycare code amendment and at least two authorized hearings, Elmwood and Floral Farms, where numerous operators/owners attended the public hearings upon receiving notification with the all-caps wording required by the State.

**ZOAC ACTION**

**November 14, 2023**

**Motion to send the item to City Plan Commission but require staff to consider the addition of an application process for residents to ask City Council to authorize a request to the board. The process should prevent applicants having a financial interest and not intrude into the board of adjustment process.**

**Motion:** Lorie Blair  
**2<sup>nd</sup>:** Enrique MacGregor

**Result:** Passed: 4-0  
For: Blair, Behring, Housewright, MacGregor  
Against: None  
Absent: Barrett, Rieves, Rubin

**Speakers:** For: None.  
Against: Evelyn Mayo, 7732 Village Trail Dr, Dallas TX 75254  
Edward Brookins, 910 Century Park Dr, Garland, TX 75040  
Jim Schermbeck, 1808 South Good Latimer Expy, Dallas, TX 75226  
Cindy Hua, 718 Crested Cove Dr, Garland TX75040  
Alicia Kendrick, 4741 Joppa Cir, Dallas, TX 75216  
Gerardo Figueroa, 2220 W Clarendon Dr, Dallas, TX 75208  
Jailene Salvador, 50005 Highridge Dr, Garland, TX 75043  
Catherine Rosas, 524 S Brighton Ave, Dallas, TX 75208  
Jennifer Rangel, 1441 Westmount Ave #224, Dallas, TX 75211  
Angel Garcia Donjuan, 2011 Dennison St, Dallas, TX 75212  
Janie Cisneros, 2821 Bedford St, Dallas, TX 75212  
Sandra Avalos, 4655 Mentor Ave, Dallas, TX 75216

**October 3, 2023**

**Motion to hold the item under advisement until November 14, 2023.**

**Motion:** Brent Rubin  
**2<sup>nd</sup>:** Enrique MacGregor

**Result:** Passed: 6-0  
For: Blair, Barrett, Behring, MacGregor, Rieves, Rubin  
Against: None



Absent: Housewright

**Speakers:** For: None.

Against: David Henley, 5232 Moneta Lane, Dallas, TX 75236  
Laura Quintero Chavez, 330 Linkwood Dr, Dallas, TX 75137  
Evelyn Mayo, 7732 Village Trail Drive Dallas TX 75254  
Christine Hopkins, 1118 Elmwood Blvd. Dallas TX 75224  
Stephanie Champion, 1842 McBroom St., Dallas TX 75212  
Cindy Hua, 718 Crested Cove Drive, Garland TX  
Raul Reyes, 815 Morris St. Dallas, Texas 75212  
Janie Cisneros, 2821 Bedford St. Dallas, TX 75212  
Jim Schermbeck, 1808 South Good Latimer Expy, Dallas, TX  
James Perkins, 5749 Gaston Ave, Dallas, TX  
Rodriguez, 1820 Muncie Ave, Dallas, TX  
Marsha Jackson, 4920 Choate Rd, Dallas, TX  
Alicia Kendrick, 4741 Joppa Cir, Dallas, TX 75216  
Valerie Plese, 3883 Turtle Creek Blvd, Dallas, TX 75219

Against (did not speak): Norma Chairez, 3947 gray oak pl, Dallas, TX  
Ronnie Mestas, 3215 Rutz St., Dallas, Tx 75212  
Caleb Roberts, 1707 N Hall St, Dallas, TX  
Misti Oquinn, 1808 S Good Latimer, Dallas, TX  
Collin Yarbrough, 5836 Birchbrook Dr, Dallas, TX  
Kemeshia Richardson, 7314 Kenwell Street, Dallas, TX  
Jonathan Maples, 7310 Kenwell Street, Dallas, TX

Neutral: Wendi Hammond, 400 S Zang, Ste. 1420, Dallas, TX 75208

**ZOAC RECOMMENDED AMENDMENTS:**

**SEC. 51A-3.102. BOARD OF ADJUSTMENT.**

*Subsections (a), (b), and (c) have been omitted for brevity.*

(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<sup>[s]</sup> 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:

*The remainder of this subsection has been omitted for brevity.*

(e) Meetings, records and rules.

*The remainder of this subsection has been omitted for brevity.*

(f) Effect of decisions. The board's decision is final unless appealed to the district court within 10 days in accordance with Chapter 211 of the Texas Local Government Code. (Ord. Nos. 19455; 20926; 22259; 22605; 24068; 26596; 27335; 27892; [30891](#); [32170](#))

## **SEC. 51A-4.701. ZONING AMENDMENTS.**

(a) Initiation.

(1) The city council or the commission may authorize a public hearing on an amendment to this article or a change in a zoning district classification or boundary. 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 city council or commission 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 city council or commission will consider authorization of a public hearing.

[\(1.1\) In addition to any notice required by Paragraph \(1\) of this subsection, the director shall send written notice of each public hearing for a change to this chapter or a zoning district under which a current conforming use would become a nonconforming use if the change to this chapter or zoning district is adopted or amended. 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 10<sup>th</sup> 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.”

(2) A person may request a change in the zoning district classification or boundary by filing an application with the director.

*The remainder of this section has been omitted for brevity.*

## **SEC. 51A-4.703. BOARD OF ADJUSTMENT HEARING PROCEDURES.**

(a) Initiation.

### ***Staff Recommendation:***

*The amendments shown in this box were introduced **after** ZOAC made a recommendation on November 14, 2023.*

(1) Except for a request to establish a compliance requirement, the [The] 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.

*The remainder of this section has been omitted for brevity.*

## SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES.

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

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

(A) Request to establish a compliance requirement [~~date~~]. The city council may request that the board of adjustment consider imposing [~~establishing~~] a compliance requirement [~~date~~] for a nonconforming use. In addition, any person who resides or owns real property in the city, but who is not an owner or operator of a nonconforming use, may request that the board 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). 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 there are insufficient funds in the Nonconforming Use Fund, 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: [~~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.~~]

(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.

(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. [~~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.]~~

(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.

(E) Notice of board action. Not later than the 10<sup>th</sup> 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 which an owner or lessee of the property is entitled to 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 a nonconforming use under Subparagraph (E) shall not later than the 30<sup>th</sup> day after the date that 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) An 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 10<sup>th</sup> day after the date of the payment.

(ii) An owner or lessee who continues operating the nonconforming use in accordance with Section 51A-4.704(a)(1)(D)(ii)(bb) must stop the nonconforming use immediately on 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 20<sup>th</sup> day after the determination is made. The director has the burden of proof to establish the correctness of his or her 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. On 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 an 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.

(2) The right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. The board may grant a special exception to this provision only if the owner can show that there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

(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 that the board has established a compliance requirement for 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].

(4) The right to operate a nonconforming use ceases when the use becomes a conforming use. The issuance of an SUP does not confer any nonconforming rights. No use authorized by the issuance of an SUP may operate after the SUP expires.

(5) The right to operate a nonconforming use ceases when the structure housing the use is destroyed by the intentional act of the owner or his agent. If a structure housing a nonconforming use is damaged or destroyed other than by the intentional act of the owner or his agent, a person may restore or reconstruct the structure without board approval. The structure must be restored or reconstructed so as to have the same approximate height, floor area, and location that it had immediately prior to the damage or destruction. A restoration or reconstruction in violation of this paragraph immediately terminates the right to operate the nonconforming use.

(6) The nonconformity of a use as to parking, loading, or an “additional provision” (except for a requirement that a use be located a minimum distance from a structure, use, or zoning district) in Division 51A-4.200 does not render that use subject to the regulations in this subsection.

(b) Changes to nonconforming uses.

(1) Changing from one nonconforming use to another. The board may allow a change from one nonconforming use to another nonconforming use when, in the opinion of the board, the change is to a new use that:

(A) does not prolong the life of the nonconforming use;

(B) would have been permitted under the zoning regulations that existed when the current use was originally established by right;

(C) is similar in nature to the current use; and

(D) will not have an adverse effect on the surrounding area.

(2) Remodeling a structure housing a nonconforming use. A person may renovate, remodel, or repair a structure housing a nonconforming use if the work does not enlarge the nonconforming use. A person may renovate, remodel, or repair a structure housing a nonconforming tower/antenna for cellular communication use if the modification does not substantially change the physical dimensions of the structure housing the nonconforming tower/antenna for cellular communication use. A modification substantially changes the physical dimensions if it meets the criteria listed in 47 C.F.R. §1.40001(b)(7), as amended.

(3) Accessory structure for a nonconforming residential use. An accessory structure for a nonconforming residential use may be constructed, enlarged, or remodeled in accordance with the requirements of Sections 51A-4.209(b)(6)(E)(vii) and 51A-4.217(a) without board approval.

(4) Nonconformity as to parking or loading.

(A) Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional required off-street parking and loading spaces are provided.

(B) Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces for a use may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner:

Required parking or loading for existing use

- Number of existing parking or loading spaces for existing use

Nonconforming rights as to parking or loading.

(C) Decreased requirements. When a use is converted to a new use having a lesser parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

(5) Enlargement of a nonconforming use.

(A) In this subsection, enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.

(B) The board may allow the enlargement of a nonconforming use when, in the opinion of the board, the enlargement:

- (i) does not prolong the life of the nonconforming use;

(ii) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and

(iii) will not have an adverse effect on the surrounding area.

(C) Structures housing a nonconforming single family or duplex use may be enlarged without board approval.

(D) A nonconforming tower/antenna for cellular communication use may be enlarged without board approval if the modification enlarging the nonconforming tower/antenna for cellular communication does not substantially change the physical dimensions of the nonconforming tower/ antenna for cellular communication use. A modification substantially changes the physical dimensions if it meets the criteria listed in 47 C.F.R. §1.40001(b)(7), as amended.

(c) Nonconforming structures.

*The remainder of this section has been omitted for brevity.*

**APPENDIX 1: Texas SB 929:**

<https://capitol.texas.gov/tlodocs/88R/billtext/html/SB00929F.htm>

S.B. No. 929

AN ACT

relating to the notice and compensation a municipality must provide before revoking the right to use property for a use that was allowed before the adoption of or change to a zoning regulation or boundary.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 211.006, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) In addition to any notice required by this section or Section 211.007, the governing body of a municipality or a zoning commission, as applicable, shall provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The notice must:

(1) be mailed by United States 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;

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

(3) include the following text in bold 14-point type or larger:

"THE [MUNICIPALITY NAME] 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 2. Subchapter A, Chapter 211, Local Government Code, is amended by adding Section 211.019 to read as follows:

Sec. 211.019. NONCONFORMING LAND USE. (a) In this section, "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.

(b) A person using a property in a manner considered to be a nonconforming use as a result of the adoption of or change to a zoning regulation or boundary may continue to use the property in the same manner unless required by a municipality to stop the nonconforming use of the property.

(c) A requirement imposed by a municipality to stop a nonconforming use of a property under this section includes:

(1) an official action by the governing body of the

municipality or a board, commission, department, or official of the municipality; or

(2) a determination by the municipality that a nonconforming use has an adverse effect or other necessary determination that a municipality must make before imposing a requirement to stop a nonconforming use under applicable law.

(d) If a municipality requires a property owner or lessee to stop the nonconforming use of a property as described by Subsection (b), the owner or lessee of the property is entitled to:

(1) payment from the municipality in an amount equal to the sum of:

(A) 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

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

(i) the market value of the property on the day before the date the notice was given under Section 211.006(a-1); or

(ii) the market value of the property on the day before a person submits an application or request to the municipality to require or the municipality otherwise requires a person to stop using the property in a manner that is a nonconforming use as described by Subsection (b); or

(2) continued nonconforming use of the property until the owner or lessee recovers the amount determined under Subdivision (1) through the owner or lessee's continued business activities according to generally accepted accounting principles.

(e) Not later than the 10th day after the date a municipality imposes a requirement to stop a nonconforming use of a property under this section, the municipality 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 which an owner or lessee of the property is entitled to under Subsection (d).

(f) The owner or lessee of a property that is subject to a requirement to stop a nonconforming use of the property under this section shall not later than the 30th day after the date the municipality gives the notice required by Subsection (e) respond in writing to the municipality indicating the remedy under Subsection (d) chosen by the owner or lessee. In the event of a conflict in the

choice of remedy by the owner and a lessee of the property, the owner's choice of remedy shall control. In the event of 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 an owner or owners holding the greater ownership interest in the property shall control. If the municipality does not receive timely notice from an owner or lessee, the municipality may choose the remedy provided under this section.

(g) A person receiving a payment under Subsection (d)(1) must stop the nonconforming use not later than the 10th day after the date of the payment.

(h) A person who continues the nonconforming use under Subsection (d)(2) must stop the nonconforming use immediately on the recovery of the amount determined under Subsection (d)(1).

(i) If more than one person seeks a payment from the municipality under Subsection (d)(1), the municipality shall apportion the payment between each person based on the market value of the person's interest in the property. A person may appeal the apportionment in the manner provided by this section.

(j) A person entitled to a remedy under this section may appeal a determination under Subsection (d)(1) or (2) to the board of adjustment of the municipality not later than the 20th day after the date the determination is made. At the hearing before the board of adjustment, the municipality has the burden of proof to establish the correctness of its determination.

(k) A municipality or a person aggrieved by the final decision of the board of adjustment under Subsection (j) may seek judicial review of the decision by filing suit as provided by Section 211.011 not later than the 20th day after the date the final decision is made. The court shall review the decision in the manner provided by Section 211.011 except that:

(1) the municipality has the burden of proving by clear and convincing evidence that its determination was correct; and

(2) the court:

(A) in reviewing the municipality's decision may not use a deferential standard in the municipality's favor; and

(B) is not limited to determining whether a decision of the board meets the requirements of this chapter or other applicable law.

(1) A person seeking to continue a nonconforming use under Subsection (d)(2) who appeals the decision of the municipality or board of adjustment may continue to use the property in the same manner pending the appeal unless an official of the body that made the decision shows cause to stay the nonconforming use by certifying in writing to the board of adjustment or court with jurisdiction over the appeal facts supporting the official's opinion that continued nonconforming use of the property would

cause imminent peril to life or property. On a showing of cause the board of adjustment or court with jurisdiction over the appeal may, after notice to the official, grant a restraining order to stay continued nonconforming use of the property.

(m) If the board of adjustment or court with jurisdiction over an appeal determines that an owner or lessee is entitled to:

(1) a payment under this section in an amount different than the amount determined by the municipality under Subsection (d)(1), the board of adjustment or court shall order, as applicable:

- (A) additional payment to the owner or lessee; or
- (B) the owner or lessee to reimburse the

municipality; or

(2) an amount of time to operate the nonconforming use that is different than the amount of time initially received under Subsection (d)(2), the board of adjustment or court shall order the municipality to allow an owner or lessee to continue the nonconforming use for additional or less time.

(n) An owner or lessee may waive the rights and remedies provided by this section by providing to the municipality a written waiver.

(o) This section does not apply to a nonconforming use that has been intentionally abandoned for at least six months.

(p) A municipality's immunity from suit and governmental immunity from liability are waived for purposes of an action brought by a property owner or lessee to enforce the rights and remedies under this section.

SECTION 3. (a) Section 211.006, Local Government Code, as amended by this Act, and Section 211.019, Local Government Code, as added by this Act, apply to a property for which:

(1) on or after June 1, 2023, the governing body or zoning commission of a municipality considers a proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of the property is a nonconforming use; or

(2) on or after February 1, 2023, the governing body or a board, commission, department, or official of a municipality requires, by ordinance or otherwise, or receives an application or request to require a person to stop nonconforming use of the property due to its nonconformity with the property's current zoning.

(b) Subsection (a)(2) of this section applies to a property regardless of whether the governing body or a board, commission, department, or official of the municipality is required by applicable law to make a determination that the nonconforming use has an adverse effect or other determination before the nonconforming use is required to stop.

SECTION 4. This Act takes effect immediately if it receives



a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 929 passed the Senate on April 20, 2023, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 929 passed the House on May 4, 2023, by the following vote: Yeas 136, Nays 8, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

**APPENDIX 2: LIST OF APPROVED COMPLIANCE HEARING CASES SINCE 2005**

1. BDA056-002. On April 19, 2006, the board approved an application of True Lee Missionary Baptist Church and the Bertrand Neighborhood Association to establish a compliance date at 4538 Scyene Road. This property is more fully described as lot's 7-9 in city block A/4475 and is zoned PD-595 CC, which requires a motel to have a Specific Use Permit. The applicant is requesting the Board to establish a compliance date and discontinuance of a nonconforming motel (has no S.U.P.).
2. BDA067-101. On October 15, 2007, the board approved an application of Dwaine Carraway to require compliance of a nonconforming use at 4411 S. Lancaster Rd. This property is more fully described as lot 8 in city block 30/4328 and is zoned CR, which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming hotel or motel use.
3. BDA078-010. On March 19, 2008, the board approved an application of New Neighborhood Crime Watch Association represented by Steven Sims to require compliance of a nonconforming use at 3705 Bonnie View Rd. This property is more fully described as lot 5 in city block 6079 and is zoned CR, which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming hotel or motel use.
4. BDA078-059. On June 24, 2008, the board approved an application of St. Philip's School PSA represented by Monifa Akinwole Bandele to require compliance of a nonconforming use at 3103 Colonial Ave. This property is more fully described as lot 17 (17-20) in city block 11/1156 and is zoned PD-595 (CC), which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming hotel or motel use.
5. BDA090-064. In November 2010, the board approved an application of Roxan Staff to require compliance of a nonconforming use at 2802 W. Northwest Highway, AKA: 2728 Community Drive. This property is more fully described as Lot 13, 14 and part of 15 in city block A/5780 and is zoned CR, which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming alcoholic beverage establishment use.
6. BDA090-105. In April 2011, the board approved an application of Evelyn Braswell to require compliance of a nonconforming use at 14831 Seagoville Road. This property is more fully described as Tract 68 A and B in city block 8823 and is zoned

R-10(A), which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a nonconforming manufactured home park use.

7. BDA112-016. On May 16, 2012, the board approved an application of Mini-Roll, Inc. to require compliance of a nonconforming use at 13943 C. F. Hawn Freeway. This property is more fully described as Tract 282 in city block 8820 and is zoned CS, which limits the legal uses in a zoning district. The applicant requests that the Board establish a compliance date for a nonconforming outside sales use.
8. BDA112-047. In April 18, 2012, the board approved an application of Dallas City Council Resolution 12-0709 represented by Melissa Miles to require compliance of a nonconforming use at 2807 E. 11th Street. This property is more fully described as being tract 2, a 12.15-acre tract of land in city block 4651, and is zoned IR, which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming industrial (inside) potentially incompatible (slaughtering of animals, fish, or poultry) use.
9. BDA189-031. In March 2019, the board approved an application of Dallas City Council Resolution 18-1529 represented by ED VOSS to require compliance of a nonconforming use at 2702 Martin Luther King Jr. Blvd. This property is more fully described as Lots 1-6, Block 21/1290, and is zoned PD 595 (CC) (Tract 4), which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming retail car wash use.

**APPENDIX 3: LIST OF ALL COMPLIANCE DATE HEARINGS SINCE 2005**

Job	Type	Status	Created	Issued	Completed
164017006-001 BDA201-037	Board of Adjustment 1519 MARTIN LUTHER KING BLVD	Denied Compliance Hearing Case	Feb 26, 2021	mmm dd, yyyy	Aug 24, 2021
164016934-001 BDA201-036	Board of Adjustment 1405 MARTIN LUTHER KING JR BLVD	Denied Compliance Hearing Case	Feb 26, 2021	mmm dd, yyyy	Jul 07, 2021
163670317-001 BDA201-030	Board of Adjustment 3606 GREENVILLE AVE Ste:B	Denied Compliance Hearing Case	Feb 05, 2021	mmm dd, yyyy	May 25, 2021
162817110-001 BDA201-023	Board of Adjustment 3606 GREENVILLE AVE	Denied Compliance Hearing Case	Dec 29, 2020	mmm dd, yyyy	Aug 24, 2021
150259327-001 BDA190-001	Board of Adjustment 1101 S HASKELL AVE	Withdrawn Compliance Hearing Case	Oct 18, 2019	mmm dd, yyyy	Jul 13, 2020
126193048-001 BDA189-031	Board of Adjustment 2702 MARTIN LUTHER KING JR BLVD	Approved Compliance Hearing Case	Jan 11, 2019	mmm dd, yyyy	Jun 21, 2019
086514599-001 BDA145-099	Board of Adjustment 5500 SWISS AVE	Denied Compliance Hearing Case	Jul 29, 2015	mmm dd, yyyy	Nov 05, 2015
064630002-001 BDA112-047	Board of Adjustment 2807 E 11TH ST	Approved Compliance Hearing Case	Mar 20, 2012	mmm dd, yyyy	Apr 24, 2012
063182262-001 BDA112-016	Board of Adjustment 13943 C F HAWN FWY	Approved Compliance Hearing Case	Nov 22, 2011	mmm dd, yyyy	May 24, 2012
060351397-001 BDA101-060	Board of Adjustment 4909 PACIFIC AVE	Denied Compliance Hearing Case	Apr 27, 2011	mmm dd, yyyy	Oct 04, 2011
057512237-001 BDA090-105	Board of Adjustment 14831 SEAGOVILLE RD	Approved Compliance Hearing Case	Sep 17, 2010	mmm dd, yyyy	May 03, 2011
055944582-001 BDA090-064	Board of Adjustment 2802 W NORTHWEST HWY	Approved Compliance Hearing Case	Apr 26, 2010	mmm dd, yyyy	Nov 29, 2010
051190950-001 BDA089-043	Board of Adjustment 150 W ANN ARBOR AVE	Denied Compliance Hearing Case	Feb 25, 2009	mmm dd, yyyy	Jun 23, 2009
050170095-001 BDA089-013	Board of Adjustment 3110 S BUCKNER BLVD	In Review Compliance Hearing Case	Nov 20, 2008	mmm dd, yyyy	mmm dd, yyyy
046940326-001 BDA078-059	Board of Adjustment 3103 COLONIAL AVE	Approved Compliance Hearing Case	Feb 29, 2008	mmm dd, yyyy	Jun 27, 2008
045937049-001 BDA078-010	Board of Adjustment 3705 BONNIE VIEW RD	Approved Compliance Hearing Case	Dec 03, 2007	mmm dd, yyyy	Apr 01, 2008
043929838-001 BDA067-101	Board of Adjustment 4411 S LANCASTER RD	Approved Compliance Hearing Case	Jun 22, 2007	mmm dd, yyyy	Oct 23, 2007
033755411-001 BDA056-C02	Board of Adjustment 4538 SCYENE RD	Approved Compliance Hearing Case	Dec 02, 2005	mmm dd, yyyy	Apr 19, 2006