

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Chapter 51A, “Dallas Development Code: Ordinance No. 19455, as amended,” of the Dallas City Code by amending Section 51A-3.102; amending Chapter 52, “Administrative Procedures for the Construction Codes,” of the Dallas City Code by amending Sections 207 and 306; related to the denial or revocation of a certificate of occupancy for a use operating without a required license, permit, or registration; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date. Now, Therefore,

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

SECTION 1. That Subsection (d), “Powers and Duties,” of Section 51A-3.102, “Board of Adjustment,” of Article III, “Decision Making 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) Except as provided in Section 306 of Chapter 52 of the Dallas City Code, ~~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 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.

(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 Subparagraph (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 2. That Subsection 207.1, “General,” of Section 207, “Powers and Duties of the Board,” of Subchapter 2, “Organization and Enforcement,” of Chapter 52, “Administrative Procedures for the Construction Codes,” of the Dallas City Code is amended to read as follows:

“**207.1 General.** The board has the following powers and duties with respect to the codes under its jurisdiction:

1. Except as provided in Section 306, h[H]ear appeals from decisions of the building official or the appropriate chief code administrator;
2. Hear requests for the use of a material or method of construction not prescribed by the codes and authorize the use when in the board’s judgment the material or method of construction is at least equivalent to that which is prescribed;
3. Hear and make recommendations concerning requests for amendments to the codes; and
4. Hear requests to suspend a person’s ability to secure permits.”

SECTION 3. That Subsection 306.5, “Denial,” 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:

**“306.5 Denial.** The building official shall deny an application for a certificate of occupancy if the building official determines:

1. The certificate of occupancy requested does not comply with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
2. The information, plans, diagrams, computations, specifications, or other data or supporting documents submitted with the application clearly show that the use or occupancy will be operated in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
3. The application contains false, incomplete, or incorrect information and the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented; or
4. The applicant does not possess and maintain a required city, county, state, or federal license, permit, or registration to operate the use or occupancy.”

SECTION 4. That Subsection 306.13, “Revocation,” 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:

**“306.13 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, [ø] has expired, or is otherwise inactive;

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; or
7. the use or occupancy authorized by the certificate of occupancy has been discontinued for six months or more.”

SECTION 5. 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.** Except as provided in this subsection, a[A]ny 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,]~~ [i]f 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 for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* may not be appealed under this subsection.
4. The building inspection advisory, examining, and appeals board and the board of adjustment may not consider an appeal of the building official’s decision to deny or revoke a certificate of occupancy if the decision is based solely on operating without a required city license, permit, or registration. An appeal of operating without a required city license, permit, or registration is governed exclusively by the appeal procedures established under the applicable city ordinance.”

SECTION 6. That 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 by adding a new Subsection 306.17, “Reliance on License, Permitting, and Registration Determinations,” to read as follows:

**“306.17 Reliance on licensing, permitting, and registration determinations.**

1. The building official may rely upon written licensing, permitting, and registration determinations, revocations, or denials issued by other city departments when determining if a use or occupancy is operating without a required license, permit, or registration.
2. The building official is not responsible for and does not have to independently investigate, verify, or adjudicate the underlying license, permit, or registration determinations made by other city departments.”

SECTION 7. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 8. That Chapter 52 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 9. 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 10. 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 11. 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:

BERTRAM A. VANDENBERG, Interim City Attorney

By \_\_\_\_\_  
Assistant City Attorney

Passed \_\_\_\_\_

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